



**House
Legislative
Analysis
Section**

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CONCEALED WEAPONS LICENSES

House Bill 5551

Sponsor: Rep. Alan Cropsey

House Bill 5552

Sponsor: Rep. Candace Curtis

House Bill 5553

Sponsor: Rep. Howard Wetters

House Bill 5554

Sponsor: Rep. James McNutt

House Bill 5555

Sponsor: Rep. Kirk Profit

House Bill 5556

Sponsor: Rep. Allen Lowe

House Bill 5557

Sponsor: Rep. Eileen DeHart

House Bill 5558

Sponsor: Rep. John Llewellyn

House Bill 5559

Sponsor: Rep. Michael Nye

Committee: House Oversight and Ethics

Complete to 3-23-98

House Bills 5551-5559 (3-23-98)

A SUMMARY OF HOUSE BILLS 5551-5559 AS INTRODUCED 2-10-98

The bills, which are tie-barred to each other, would change the rules and procedures by which citizens may apply for and receive licenses to carry concealed weapons. Currently, licenses to carry concealed weapons are issued by one of 83 separate county "gun boards." The individual applying for the license has the burden of establishing that he or she has a special need for such a license.

Under House Bills 5551, 5552, 5553, 5554, 5555, and 5558, which would amend the handgun licensure act (MCL 28.422 et al.), each county would have a concealed weapon licensing board that would be responsible for issuing licenses to carry concealed weapons. The boards would be responsible for reviewing the concealed weapon license applications of county residents,

determine whether or not to issue a license, and perform other duties as required by law. These boards would be required to have the following persons or their designees as members: the county prosecuting attorney, the county sheriff, and the director of the Department of State Police. The board would also include two members of the general public who would be appointed by the county board of commissioners or, if the county had a county executive or a manager, by the county executive or a manager. The prosecuting attorney or his or her designee would act as the board's chairperson and the county clerk would serve as the clerk of the board. Three members would constitute a quorum; however, the business of the board would be conducted by a majority vote of all of its members.

Requirements for license. The concealed weapon licensing board would be required to grant a license to any applicant who had properly submitted an application and whose application indicated that he or she was eligible to have a license, unless the board determined that issuing a license to the applicant would threaten the safety of the applicant or any other individual. In order to be eligible to receive a concealed weapon license an individual would have to:

** be a current resident of Michigan, residing in the state for at least one year;

**be at least 21 years old, or at least 18 years old if the individual were required to carry a concealed weapon as part of his or her employment [Note: a license issued to an 18-, 19-, or 20-year-old under this exception would be restricted to only allow the individual to carry a concealed weapon in the course of his or her employment];

**show evidence of knowledge or training in the safe use and handling of a firearm (see below);

** never have been convicted of a violent felony. [A violent felony would include felonious assault; assault with intent to commit murder; assault with intent to do great bodily harm less than murder; unarmed assault with intent to steal; attempted murder; home invasion; first degree child abuse; solicitation to commit murder; first and second degree murder; manslaughter; kidnaping; breaking or escaping jail, health care facility or other place of confinement; aggravated stalking; resisting or obstructing an officer in the discharge of his or her duty; first, second, and third degree criminal sexual conduct; assault with intent to commit criminal sexual conduct; armed and unarmed robbery; bank, safe, or vault robbery; inciting to riot; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state.]

**have no other felony charges pending, nor convictions or confinement for any other felonies, in this state or any other, for the eight years immediately prior to the application;

**have not been convicted of or confined for a violent misdemeanor or a misdemeanor punishable by imprisonment for more than one year during the eight years preceding the application [Note: A violent misdemeanor would include assault or spouse abuse; negligent homicide; stalking; fourth degree criminal sexual conduct; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state. Confinement would include detention in a juvenile facility, and conviction could include a final

conviction, payment of a fine, a guilty or nolo contendere plea that was accepted by the court, a finding of guilt for a criminal law violation, or a juvenile adjudication or disposition for a violation that if committed by an adult would be a crime by either the juvenile division of probate court or family division of circuit court, regardless of whether the penalty is rebated or suspended];

** never have been acquitted of a crime on grounds of insanity;

** not be under a court order of legal incapacity in this state or any other state, nor be under an order of involuntary commitment for mental health treatment;

**not be currently enjoined from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under MCL 750.224f, which bars individuals convicted of committing or attempting to commit certain crimes from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing firearms.

** not be the subject of a LEIN order or disposition entered as the result of his or her involuntary hospitalization or alternative treatment under the Mental Health Code, or legal incapacity under the Revised Probate Code, or due to the existence of an injunction or restraining order for domestic violence, or for stalking under the provisions of the Revised Judicature Act, or for having been declared not guilty of any crime by reason of insanity, or having been released from incarceration subject to conditions or restrictions which were placed upon him or her for the protection of others.

The concealed weapon licensing board would be required to use the law enforcement information network to verify that an applicant met these requirements. The board could also contact the references provided by the applicant.

Application for license. In order to receive a license to carry a concealed weapon, an individual would have to obtain and complete an application on a form provided by the director of the Department of State Police. Police departments for local units of government, county sheriffs, and county clerks would be required to provide an application kit during normal business hours to anyone who wanted to apply for a license to carry a concealed weapon. The kit would contain an application form, fingerprint cards, and written information regarding the procedures involved in obtaining a license, including where the individual could receive the necessary training to qualify for such a license and the applicant's right to appeal the denial of a license and the form required for making an appeal. The concealed weapon licensing board would be required to retain a copy of each application as an official record.

The form would provide the applicant a place to indicate whether he or she needed a temporary license while waiting for the regular license to be issued. The applicant would have to file the completed application with the county clerk during normal business hours. In addition to the completed form, the applicant would also have to include two photographs in passport size, style, and quality.

The application would have to be signed under oath and include the following: the applicant's name and address; the names, addresses and telephone numbers of three references -- two who were not related to the applicant, and one who was related to the applicant by marriage, blood, or adoption and was 18 years old or older. If the applicant did not have a spouse, parent, grandparent, great-grandparent, uncle or aunt, sibling, niece or nephew, son or daughter, grandson or granddaughter, great grandson or great granddaughter who was 18 years old or older, the applicant would have to include a statement so indicating. The application would also have to include statements indicating the following:

** that the applicant was familiar with and met the requirements set forth in the act for a license to carry a concealed weapon,

** that the applicant has no history of mental illness that would disqualify him or her from receiving a license and indicating whether he or she has been treated for substance abuse within the preceding five years,

** whether the applicant has been convicted in this state or elsewhere for any crime involving domestic violence,

** that the concealed weapon licensing board would have access to any record of the juvenile division of the probate court or the family division of the circuit court relating to the applicant's eligibility to receive a license, and to the applicant's medical records that relate to his or her statements about history of mental illness and treatment for substance abuse. However, the applicant could request that these records or information be reviewed by the board in a closed session which the applicant would have a right to attend. Information received regarding these records or information would be confidential and could not be disclosed to any person except for the purposes of determining whether to issue a concealed weapon license to the applicant.

Finally, the application would also have to contain conspicuous warnings that intentionally making a material false statement on the application would be a felony punishable by imprisonment for not more than 4 years and/or a fine of not more than \$2,000 and that the acceptance of a license to carry a concealed weapon would constitute an implied consent to the lawful request of a police officer for the license holder to undergo chemical analysis.

Investigation. The board would be allowed to investigate an applicant, provided that the investigation was restricted to determining whether the applicant was eligible for a license. The board could require the applicant to appear before the board at a mutually agreed upon time for a conference. The applicant's failure or refusal to appear for such a conference, without just cause, would be grounds for denial of a license.

Firearm safety training. An applicant would be required to show that he or she had knowledge or training in the safe use and handling of a pistol. In order to be sufficient to provide the required knowledge and training, a course would have to include at least 12 hours of instruction in the safe use and handling of a pistol, the law of self-defense, and criminal and civil liability for improper use of a pistol. In addition, the course would have to include at least four hours of firing range time and provide a certificate of completion.

An applicant could document knowledge and training by successful completion of one of the following: 1) a pistol safety training course or class conducted by the National Rifle Association (NRA), 2) a law enforcement firearms safety training course for security guards, investigators, special deputies, or law enforcement officers, 3) a pistol safety training course or class using instructors certified by the NRA or this state, available to the general public and offered by a law enforcement agency, junior or community college, college, or public or private institution or organization, or firearms training school. Provided that they were not grossly negligent, a person or entity that provided one of these courses would be immune from civil liability for damages caused by a person who had taken the course. The immunity granted to a person or entity engaged in these training course would be in addition to any other immunity provided by law.

Fingerprinting. As part of the application process, the applicant would be required to have two sets of fingerprints taken. The fingerprints would be taken by the local police department or local county sheriff on forms supplied in the secretary of state's application kit. The police department or sheriff's office would be required to take the applicant's fingerprints within three business days after his or her request to be fingerprinted. One set of fingerprints would be forwarded to the FBI or an entity designated by the FBI and the other would be sent to the Department of State Police. Both sets of prints would be compared by the appropriate subdivision of each agency with the print records retained by each agency. The FBI would then send a report of its comparisons to the Department of State Police. When the department received the FBI's report it would be required to send copies of the results of both fingerprint comparisons to the entity that took the fingerprints and to the concealed weapon licensing board for the county where the applicant resides.

A concealed weapon licensing board could not issue a license to the applicant without both fingerprint comparison reports. However, if more than 90 days had passed after fingerprints were submitted to the appropriate agencies without receiving one or both of the reports, the report requirement would be waived and the board could not deny the individual a license solely because it had not received a report.

The department would be required to destroy the fingerprints upon the expiration of 90 days after the fingerprints were submitted for comparison or after providing the comparison report to the board and the fingerprinting entity, whichever occurred first. If the FBI did not return the fingerprints to the department within 90 days, the department would have to require the FBI to either destroy or return the fingerprints.

Fees. The license application fee would be \$100, payable to the county at the time the applicant filed his or her application. The fee would be divided between the county and the state -- \$61 would go to the county treasurer to be deposited in the county's general fund and credited to the county sheriff for all costs to the sheriff in implementing the bill's provisions, and the remaining \$39 would be forwarded to the state treasurer for deposit into the state general fund to the credit of the Department of State Police for use in implementing the fingerprinting and background investigation requirements of the bill. Fees for a license renewal would be \$35 payable to the county for deposit in the general fund of the county. However, a retired police officer of this state or a political subdivision of this state would not be required to pay a renewal

fee, provided that he or she presented satisfactory evidence to the board of his or her status as a retired police officer.

Licenses. An applicant could be given a temporary license, pending the issuance of a full license, if the licensing board determined that there was probable cause to believe that the applicant or his or her family would be endangered by the applicant's inability to obtain a license immediately. A temporary license would be issued in a form provided by the state police. The license would be unrestricted and would be valid for no more than 180 days, with the opportunity to renew the license for one additional period of no more than 180 days.

A full license would be valid for three years and could be renewed in the same manner as the original license. However, a license renewal would be subject to lower fees and would not require fingerprints. An applicant would be required to present satisfactory evidence to the board that he or she has completed no less than three hours of review of the training required for initial licensing since receiving the license, including firing range time in the six months immediately preceding the renewal application.

A person who possessed a license to carry a concealed pistol at the time the bill took effect (January 1, 1999) would be allowed to continue to carry a weapon under that license until the expiration or termination of the license, whichever occurred first. At that point the person could apply for a license under the bill's provisions for a license renewal.

The license itself would contain a registration number unique to that license, the license holder's name, address, physical description, and photograph, as well as the license's effective dates, and any restrictions. The license would also have to include statements indicating that the license holder was authorized to carry a concealed weapon throughout Michigan but was not authorized to discharge or otherwise use the weapon illegally and that improper discharge or use of the pistol could result in criminal or civil liability.

A license holder would be required to have the license in his or her possession anytime he or she was actually carrying a concealed weapon and would be required to show the license to a police officer at the officer's request. Failure to comply with an officer's request or failure to carry one's license would be a state civil infraction, punishable by a fine of up to \$100.

Denial of licenses. The concealed weapon licensing board would be required to issue or deny a license within 30 days after the board received the fingerprint comparison report or within 120 days after the application was submitted to the board, whichever occurred first.

If the concealed weapon licensing board denied issuance of a license, the board would be required to immediately inform the applicant in writing of his or her right to petition the district court for a review of the denial and of the reasons for the denial. The statement of the reasons for the denial would have to include a statement of the specific and articulable facts which support the denial, and copies of any writings, photographs, records, or other documentary evidence used to support the denial.

An applicant could petition the district court for the judicial district where he or she resides for review of a denial, failure to issue a license, or issuance of a restricted license. The review would be of the application and qualifications, not of the process.

Revocations. The concealed weapon licensing board could revoke a license that it had issued to an individual if the board determined that the license holder had committed any violation of the act, other than failure to have his or her license on his or her person, or if it determined that the individual was not eligible to have received the license. A license that was issued based on an application that contained a material false statement would be void from the date it was issued. However, a license could not be revoked under such circumstances without a written complaint and an opportunity for a hearing before the board. The board would be required to give the individual at least seven days notice for the hearing. Notice would have to be served personally or by certified mail delivered to the individual's last known address. The clerk of the board would be authorized to administer an oath to anyone who testified before the board in such a hearing.

Violations. If an individual was discovered carrying a concealed weapon without a license, the weapon could be seized by a peace officer immediately without any hearing or other procedure. While individuals without licenses to carry a concealed weapon under the bill would be still be subject to having their weapons forfeited to the state for carrying or possessing a weapon in violation of state law, an individual with a license to carry a concealed weapon whose weapon had been seized for failing to show his or her license would be able to reclaim the weapon by showing his or her license to the law enforcement agency holding the weapon within 30 days of the weapon's seizure. If the weapon was not claimed within 30 days, the law enforcement agency could dispose of the weapon, and would not be civilly liable for the weapon's loss or destruction.

Chemical analysis. Acceptance of a license to carry a concealed weapon would constitute an implied consent to submit to a chemical analysis. A license holder would be prohibited from carrying a concealed weapon if he or she had an alcohol content of 0.02 grams or greater per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. A peace officer who believed that a license holder was violating this prohibition could require the license holder to submit to a chemical analysis. The officer would first have to inform the license holder that he or she could refuse to submit to the test, but if he or she did refuse his or her license could be revoked and/or the officer could get a court order to require the license holder to submit to the test. The officer would also have to inform the license holder that if he or she submitted, he or she could choose who would perform the test. If the license holder refused to submit to the test or if the test was made and the results indicated a prohibited level of alcohol, the officer would be required to promptly report the refusal or violation in writing to the concealed weapon licensing board that issued the license.

The collection and testing of blood, breath, or urine for chemical analysis would be conducted in the same manner as such specimens are collected and tested for alcohol-related driving violations under the Michigan Vehicle Code.

Concealed weapon license databank. The Department of State Police would be required to use information from concealed weapon licensing applications to create and maintain a computerized data base to keep track of individuals who apply for licenses to carry concealed weapons. The data base would contain the names, addresses and county of residence of all applicants, and their concealed weapon license number, its date of expiration, and any restrictions imposed on the license or, if the applicant was denied a license, the reasons that application was denied. An explanation of why a license had been denied would be deleted from the data base if the individual were later issued a license. The information contained in the data base would be entered into the LEIN and would only be released for the purposes of the act or for law enforcement officials to confirm an individual's license. The state police would be required to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives. The report would have to contain all of the following information for each county concealed weapon licensing board: the number of applications received, the number of licenses issued, the number of licenses denied and the categories for the denials, the number of licenses revoked and the categories for revocation, and the number of applications pending at the time of the report.

Restrictions on employees and others. An employer, including a police agency, would not be allowed to prohibit an employee from either applying for and receiving a concealed weapon license or carrying a concealed weapon in compliance with such a license. However, an employer could prohibit its employees from carrying a concealed pistol during the course of their employment. Further, a police agency could not discipline or otherwise retaliate against an employee for providing information, including but not limited to oral testimony, regarding the propriety of issuing a concealed weapon license to an individual. A police agency would include a state, city, village, or township police department, a county sheriff, a township constable, or a college or university police or public safety department.

An owner of private real property could post a sign on his or her property stating that carrying a concealed weapon on that property was prohibited.

Repealers. The bills would repeal the current concealed weapons licensure provisions, the fee limit for a license to purchase, carry, or transport a pistol, and the waiver of renewal fees under the handgun licensure act for retired police officers.

House Bill 5556 would amend the provisions of the Michigan Penal Code (MCL 750.239) that require that a pistol carried in violation the code be summarily forfeited to the director of the Department of State Police and be disposed of according to his or her instructions. The bill would provide an exception for seizure of a concealed pistol carried without a license and provide that such cases would be subject to the provisions of handgun licensure act as amended by the other bills in the package.

House Bill 5557 would amend the Open Meetings Act (MCL 15.268) to provide that a public body could meet in a closed session, upon an applicant's request, for the purpose of considering certain material or information submitted by an applicant for a license to carry a concealed pistol.

House Bill 5559 would amend the governmental immunity statute (MCL 691.1401-691.1415) to specify that a governmental entity that seized a pistol from a person for carrying a concealed weapon without a license would be liable to the weapon owner for the negligent or intentional damage or loss of that weapon.

Analyst: W. Flory

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