



**House
Legislative
Analysis
Section**

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CONCEALED WEAPON LICENSES

House Bill 4530

Sponsor: Rep. Michael Green

**Committee: Conservation and Outdoor
Recreation**

Complete to 5-3-99

A REVISED SUMMARY OF HOUSE BILL AS INTRODUCED 4-21-99

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. The bill would amend the handgun licensure act (MCL 28.421 et al.) to change the rules and procedures by which citizens may apply for and receive licenses to carry concealed weapons, as follows:

Legislative Intent. The legislation states that:

"It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining licenses to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol. It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial."

County Concealed Weapon Licensing Boards. Under the bill, each county would continue to have a concealed weapon licensing board with exclusive authority over issuing or denying licenses to carry a concealed pistol to residents of that county. The boards would review the concealed weapon license applications of county residents, determine whether or not to issue a license, and perform other duties as required by law. The boards would continue 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 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. Two members would constitute a quorum; however, the business of the board would be conducted by a majority vote of all of its members.

Record Purchase Requirements. An individual who received a license to carry a concealed pistol under the bill would not be required to also get a license to purchase, carry, or transport a pistol. If a person with a license purchased a pistol, the seller would have to complete a sales record in triplicate as provided by the state police, including the individual's concealed weapon license number. The seller would retain one copy of the record, provide a copy to the purchaser and forward the original to the state police within 10 days of the purchase. The state police would

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be able to promulgate rules to implement this. The triplicate record purchase requirements would not apply to wholesalers or those purchasing antiques. A person who made a materially false statement on a sales record would be guilty of a felony punishable by imprisonment for up to four years, a fine of up to \$2,500, or both.

Application for license. In order to receive a license to carry a concealed pistol, an individual would have to obtain and complete an application form provided by the director of the Department of State Police. County sheriffs, local law enforcement agencies, 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 pistol. 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, the applicant's right to appeal the denial of a license, and the form required for making an appeal. An individual who was denied an application kit and obtained an *order of mandamus*, directing the licensing board to provide him or her with the kit, would be awarded actual and reasonable costs, plus attorney fees, for obtaining the order. The concealed weapon licensing board would be required to retain a copy of each application as an official record.

Information received by a concealed weapon licensing board would be considered confidential and could not be disclosed except for the purposes of the act. The application 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. The licensing board would have to provide each applicant with a copy of a compilation of the state's firearms laws created by the Legislative Service Bureau. The compilation would be provided to the applicant at the time the application was submitted and the board would have to require the applicant to sign a written statement indicating that he or she had received a copy of the compilation. An individual would not be eligible to receive a license until he or she had signed the statement.

The application would have to be signed under oath and include the following: the applicant's name and address and, if appropriate, a statement indicating that the applicant resides in a city, village, or township that has a police department. The application would also have to include statements indicating the following:

- that the applicant met the criteria for a license to carry a concealed pistol,
- whether the applicant has a history of mental illness that would disqualify him or her from receiving a license,
- whether the applicant has been convicted in this state or elsewhere for any crime involving domestic violence,
- whether the applicant had been dishonorably discharged from the U.S. Armed Forces,

- whether the applicant sought a temporary license, pending issuance of a regular license, and the facts supporting issuance of the temporary license,

- that the concealed weapon licensing board would have access to any record 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. However, the applicant could request that these records or information be reviewed by the board in a closed session which the applicant and his or her representative would have the 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 a conspicuous warning that an application was executed under oath, and that intentionally making a material false statement on the application would be a felony punishable by imprisonment for up to 4 years, a fine of up to \$2,500, or both.

Fees. Each applicant would pay a \$49 fee for an application. The fee would be divided between the county and the state -- \$10 would go to the county treasurer to be deposited in the county's general fund and credited to the county clerk and \$39 would be forwarded to the state treasurer for deposit into the state general fund to the credit of the Department of State Police.

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.

Requirements for license. Each county sheriff would be required to verify an applicant's eligibility for a license on behalf of the concealed weapon licensing board, using the law enforcement information network to verify that an applicant met the requirements. In order to be eligible to receive a concealed weapon license an individual would have to:

- be a citizen of the United States or a resident legal alien, and a resident of Michigan who has resided in the state for at least six months;

- 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. [A license issued to an 18-, 19-, or 20-year-old under this exception would 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 pistol (see below);

- never have been convicted of a felony in this state or elsewhere [a felony would include a violation of a law designated as a felony, or a violation of law punishable by imprisonment for more than one year];

- 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 specified criminal offense, during the eight years preceding the application. [Specified criminal offenses would include fleeing and eluding; hindering or obstructing a weights and measures enforcement officer; hindering, obstructing, assaulting, or committing bodily injury upon a director or other authorized representative under the Motor Fuels Quality Act; negligent, careless, or reckless operation of a vessel resulting in crippling or death; exhibiting or providing sexually explicit materials to minors; assault or domestic assault; aggravated assault or aggravated domestic assault; solicitation to commit a felony; impersonating an officer; stalking; careless, reckless, or negligent use of a firearm; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state];

- not be under a court order of legal incapacity in this state or any other state;

- never have been found guilty, but mentally ill, of a crime, and not offered a plea of insanity;

- never been subject to an order of involuntary commitment due to mental illness;

- 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 placed upon him or her for the protection of others;

In addition, the board would have to determine that issuing a license to the applicant would not threaten the safety of the applicant or any other person.

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 county sheriff on forms supplied in the application kit. The sheriff's office would be required to take the applicant's fingerprints within three business days after the applicant's request to be fingerprinted. The fingerprints would be forwarded immediately - one set of fingerprints would be sent 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. Within 10 days of receiving the FBI's report the department would be required to send copies of the results of both fingerprint comparisons to the county sheriff that took the fingerprints and to the concealed weapon licensing board for the county where the applicant resides. The FBI would be required to return the fingerprints to the department and the department would be required to destroy the prints immediately, unless the comparison report wasn't received within 30 days after the application was completed. If the fingerprint comparison was not received by the board within 30 days, the board would be required to issue the applicant a temporary license. In such cases, the temporary license would expire as soon as the fingerprint report was received.

Licenses. Subject to the receipt of the fingerprinting results, the concealed weapon licensing board would be required to issue 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 within 30 business days after proper submission of the application. The board could also contact the references provided by the applicant.

The board would be allowed to investigate an applicant, including, where possible, contacting his or her local police department, provided that the investigation was restricted only to an applicant's eligibility, and the investigation would end after that determination was made. The board could also contact references provided by the applicant. The board could also 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 good reason, would be grounds for denial of a license.

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, or if the applicant's fingerprint report was not received within 30 days. 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. The applicant would be required to surrender the temporary license to the board upon issuance or denial of the full license.

A full license would be valid for five 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. In order to renew a license after January 1, 2000, a license holder would be required to present a signed statement to the board certifying that he or she had 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 applied for a license to carry a concealed pistol for the first time before September 30, 1999 would have to complete firearm safety training (see below). A person who was licensed as of that date would be eligible for a renewal license, regardless of whether that license was restricted or not.

The license itself would contain the license holder's name, address, and physical description, as well as the license's effective dates, and any restrictions. The license would authorize the license holder to carry a pistol, concealed on or about his or her person, or in a vehicle (concealed or otherwise) throughout Michigan.

Carrying a concealed pistol. A license holder would be required to have the license in his or her possession anytime he or she was actually carrying a concealed pistol and would be required to show the license and his or her driver license or Michigan personal identification card to a police officer at the officer's request. Failure to comply with an officer's request or failure to carry one's concealed pistol license would be a state civil infraction, and the court would be required to notify the appropriate concealed weapon licensing board.

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. However, if the licensee had his or her driver's license or Michigan ID and the officer were able to verify that the individual had a license through the LEIN system, then the pistol would not be subject to forfeiture.

If the individual had no license to carry a concealed pistol, the weapon would be forfeited to the state for carrying or possessing a weapon in violation of state law. However, a license holder whose pistol was seized for failing to show his or her license to a police officer would be able to reclaim the pistol by showing his or her license to an authorized employee of the law enforcement agency holding the weapon within 45 days of the weapon's seizure. If the weapon was not claimed within 45 days, the law enforcement agency could dispose of the weapon in the same manner as if the owner had been unlicensed.

Firearm Safety Training. An applicant would have to show that he or she had knowledge or training in the safe handling of a pistol. In order to adequately provide the required knowledge and training, a firearms safety program and instructor would have to be certified by this state or a national or state firearms training organization and provide instruction in at least the following areas: the safe use and handling of a pistol; ammunition knowledge and fundamentals of handgun shooting; handgun shooting positions; firearms and the law, including civil liability issues; avoiding criminal attack and controlling violent confrontations; and Michigan's laws regarding carrying a concealed pistol. The course would have to include at least eight hours of instruction with three hours of firing range time and provide a certificate of completion.

A person or entity that provided instruction or training would be immune from civil liability for damages to any person or property caused by the person who was trained, unless the trainer were grossly negligent.

Alcohol restrictions on license holders. A license holder would be prohibited from carrying a concealed pistol while he or she was under the influence of alcohol or a controlled substance or while having a bodily alcohol content (BAC) 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 or suspended 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- and drug-related driving violations under the Michigan Vehicle Code.

A license holder who was found to be in violation of these restrictions would be subject to the following penalties:

- If the licensee had a BAC of .02 or more but less than .08 grams, he or she would be guilty of a state civil infraction and could be punished by a fine of \$100. The court could also order the licensing board that had issued the individual's license to revoke the license for one year and the board would be required to comply.
- If the licensee had a BAC of .08 to .10, he or she would be guilty of a misdemeanor, punishable by imprisonment for up to 93 days, or \$100, or both. The court could order the licensing board to revoke the individual's license for up to three years, and the board would be required to comply.
- If the person had a BAC of .10 grams or more or was under the influence of alcohol, a controlled substance, or a combination of drugs and alcohol, the licensee would be guilty of a misdemeanor punishable by imprisonment for no more than 93 days and/or a fine of \$100. The court would be required to order the appropriate licensing board to revoke the individual's license for no less than one year or more than three years.

The provisions against carrying a concealed pistol while intoxicated would not prohibit a licensee with any bodily alcohol content from transporting his or her pistol in the locked trunk of his or her motor vehicle or unloaded and separated from its ammunition in a locked compartment or container if the vehicle didn't have a trunk.

Restriction on where a person could carry a concealed pistol under a license. Although an employer, including a police agency, could not prohibit an employee from either applying for and receiving a concealed weapon license or carrying a concealed weapon in compliance with such a license, an employer could prohibit an employee from carrying a concealed pistol during the course of his or her employment.

Notification and reporting of crimes committed by license holders. If a license holder were charged with having committed a violent felony, felony, or specified criminal offense, the

prosecuting attorney would be required to promptly notify the licensing board that had issued the license holder's license. The prosecuting attorney would also have to promptly notify the board of the disposition of the charge. If the license holder were convicted of the crime, the prosecuting attorney would be required to indicate to the board whether the crime had involved brandishing or use of a pistol, the license holder had been carrying a pistol during the commission of the crime, or if no pistol had been carried by the license holder during the commission of the crime. The state police would be required to provide a form for reporting this information.

If the concealed weapon licensing board was notified that a licensee had been charged with a felony or specified criminal offense, the board would immediately suspend the individual's license until there was a final disposition of the charge and would send notice of the suspension to the person's last known address. The notice would provide information that the individual was entitled to a prompt hearing on the suspension. The bill would specify that the individual would be entitled to 10 days notice of the hearing.

Each year the chair of the board would be required to compile and provide a report to the Department of State Police by a date determined by the director of the department. The report would contain the information reported by the prosecuting attorneys and the information provided by the courts for failure to show a license to a peace officer, refusal to submit to a chemical test as required under the bill, or having any bodily alcohol content while carrying a concealed pistol.

Denials, revocations and appeals. A license that had been issued based on an application containing a material false statement would be void from the date it was issued.

Within 10 business days after denying a person's application for a concealed pistol license, a concealed weapon licensing board would be required to inform the applicant in writing of the reasons for the denial and of the applicant's right to appeal the board's decision to the district court. The explanation of the board's decision would have to include a statement of the facts supporting the denial, and copies of any writings, photographs, records, or other documentary evidence used to support the denial.

If the concealed weapon licensing board was notified that a licensee had been charged with a felony or specified offense, the board would be required to immediately suspend the individual's license pending the final disposition of the case. Notice of the suspension would have to be sent to the licensee's last known address as indicated in the board's records. The notice would have to inform the licensee that he or she was entitled to a prompt hearing on the suspension. Upon the licensee's written request, the board would have to hold such a hearing.

A concealed weapon licensing board could revoke any license it issued if it determined that the individual was not eligible to have received the license or that the license holder had committed any violation of the act, except that a person could not have a license revoked for failing to show his or her license to a peace officer. However, if the board determined that the license holder had been found responsible for three or more civil infraction violations of the handgun licensure act, the board would be required to hold a hearing and could suspend the individual's license for no more than one year.

Except where the licensee was charged with a felony or specified crime, in order to revoke a license the board would have to issue a written complaint and provide the license holder an opportunity for a hearing before the board. The board would be required to give the individual at least seven days notice prior to 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.

An applicant could appeal the board's decision to deny a license, fail to issue a license, or to issue a restricted license to the district court for the judicial district where he or she resides. The hearing on the appeal would be a trial de novo (from the beginning -- of the application and qualifications, not of the process) without a jury. Witnesses would be sworn and a verbatim record would have to be taken. If the court determined that the board's decision was arbitrary and capricious, the court could order the board to pay the applicant's actual and reasonable costs and attorney fees for the appeal. If the applicant's appeal was found to be frivolous, the court could order the applicant to pay the board's actual and reasonable costs and attorney fees.

Concealed weapon license data bank and annual report. 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 who applied for licenses to carry concealed weapons. Information in the data base would be confidential and would not be subject to Freedom of Information Act (FOIA) provisions. The data base would contain only the following information about each applicant:

- The names, addresses and county of residence of all applicants.
- Where applicable, the concealed weapon license number, its expiration date, and any restriction on a license issued to a person under the age of 21 for use during his or her employment.
- If the applicant had been denied a license after the effective date of the bill, the reasons for that denial. An explanation of why a license had been denied would be deleted from the data base if the individual were later issued a license.
- A statement of all criminal charges pending and convictions against the applicant during the license period.
- A statement of all civil infractions of the handgun licensure act pending or obtained against the applicant during the course of the license period.

In addition, the data base would contain the following information regarding the behavior of licensees, categorized by offense:

- The number convicted or found responsible for civil infractions of the handgun licensure act or for criminal violations, including the number of crimes in each category that had involved

the brandishing or use of a pistol, carrying a pistol during the commission of a crime, and the number where the license holder had not used a pistol during the commission of the crime.

- The number that had criminal charges pending, dismissed, and findings of not responsible or not guilty.

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 purposes. 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, licenses issued, licenses denied, licenses revoked, and the number of applications pending at the time of the report.

- The categories for the denials and categories for revocation.

- The mean and median amount of time and the longest and shortest times taken by the FBI to supply the fingerprint comparison report (this could be derived from a statistically significant sample).

- The costs incurred per permit in each county.

Repealers. The bill would repeal current provisions concerning concealed weapons license fees, concealed weapon licensing boards, forfeiture of firearms, and the waiver of renewal fees under the handgun licensure act for retired police officers.

Effective Date. The bill would take effect September 30, 1999.

Analyst: R. Young

■ 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.