



**House
Legislative
Analysis
Section**

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**MODIFY CONCEALED WEAPON
LAW**

**House Bill 6337 as enrolled
Public Act 719 of 2002
First Analysis (1-14-03)**

**Sponsor: Rep. Scott Hummel
House Committee: Civil Law and the
Judiciary
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

Public Act 381 of 2000 amended the handgun licensure act to revise the way citizens apply for and receive licenses to carry a concealed pistol. The act changed the process from one in which county gun boards made decisions about whether to grant licenses on a case-by-case basis, which many complained was unnecessarily restrictive and resulted in arbitrary and discriminatory decisions, to a system in which gun boards are required to issue a permit if certain requirements are met (commonly known as a "shall issue" system). The act also imposed a number of requirements on license applicants, including a requirement to complete a firearm safety training course and submit to a criminal records check, and restricted license holders from carrying pistols while under the influence of alcohol or a controlled substance or on certain premises, including on school grounds, at a child care center, sports arena, bar, hospital, house of worship, entertainment facility with a seating capacity of 2,500 or more, and in a college or university classroom or dormitory.

The handgun licensure act (Public Act 372 of 1927) contains the 2000 "CCW" revisions. The Michigan Penal Code (MCL 750.227) forbids a person from carrying a concealed pistol without a license (granted under the handgun licensure act). The penal code exempts peace officers (who are "regularly employed and paid" by the federal government, the state, or a local government) from the requirement to obtain a CCW permit, but does not address reserve police officers or retired officers. Prior to the enactment of Public Act 381, which took effect on July 1, 2001, many counties routinely granted CCW licenses to retired and reserve police officers, and indeed, this was one of the criticisms of the old process: that to obtain a license in some counties, one had to be either a former police officer or meet some other highly restrictive standard. Thus, under the old system, there were very few requirements in the law for obtaining a

CCW permit (i.e., no requirement for firearm safety training), but one had to obtain a license through a very selective system. Under the new law, the requirements are more stringent, but the process is considerably more democratic.

Now that the new CCW law has been in effect for some time, proponents of that law argue that many of the fears put forth at the time the law was enacted have been disproven, and that some of the restrictions should be loosened. For instance, the act contains a long list of locations where concealed weapons are not to be carried. Advocates for gun owners argue that this is excessive and unnecessary, and have asked for amendments to reduce the number of "gun free" zones. And, since there is no evidence of any of the 85,000 CCW licensees committing any crimes with their pistols, it has been proposed that the licensing restrictions could be eased, including removing most misdemeanors from the list of crimes that would disqualify a person from receiving a license.

In addition, according to testimony from police officials, there have arisen several unintended consequences of the 2000 legislation. One affects reserve police officers, who are used by many police departments around the state to extend their manpower capabilities, generally for purposes of providing security and ensuring order at events attracting large groups of people. To carry a weapon legally, particularly in a vehicle, it is necessary to have a CCW license (or to be exempt from the licensing requirements). Prior to the passage of Public Act 381, reserve officers generally were able to obtain CCW licenses. Since the legislation was enacted, these licensees are subject to the new restrictions generally applied to CCW licensees: they are not allowed to carry their weapon on the premises of those areas the law lists as restricted for CCW

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licensees: school property, churches, bars, sports arenas, and so forth. This prevents police departments from assigning reserve officers to help cover school events, such as football games and graduation ceremonies, and other similar community events that may be held on or near one of the restricted premises. The attorney general has ruled (in OAG #7098 – 2002) that reserve officers, if “regularly employed and paid” by a police agency, are exempt from the CCW licensing requirements, but apparently part-time or volunteer reserve officers are *not* exempt. The attorney general opined that a reserve officer must first apply to the appropriate county gun board for a determination whether he or she qualifies for an exemption. A county gun board must determine that a reserve officer is “regularly employed and paid” by a police agency, and this depends upon whether the person performs “substantial work that constitutes a large part of the officer’s daily activity”. In practice, then, many reserve police officers are required to obtain CCW permits and must abide by the law’s restrictions on licensees. This drastically limits the ability of police departments to use these officers, who are often volunteers, to supplement their forces. (Note: Subsequent to the introduction and House passage of this package of bills, the attorney general opined, in Opinion No. 7113 [June 28, 2002], that a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the “gun-free” zones established by the handgun licensure act; and if the officer is either a fully authorized “peace officer” or, alternatively, possesses a valid concealed pistol license issued under the handgun licensure act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.)

In addition, retired police officers, who have had extensive training and experience in handling weapons, are now subject to requirements to take handgun safety courses in order to obtain a CCW license (unless they held a CCW license as of July 1, 2001). This seems unnecessary and overly restrictive.

THE CONTENT OF THE BILL:

House Bill 6337 would amend the handgun licensure act (MCL 28.425b et al.) to:

- Limit the misdemeanors that disqualify an applicant for a license to carry a concealed pistol, and make other changes regarding license application procedures;

- Revise the fees that an applicant must pay, and provide for five-year, instead of three-year, licenses;

- Revise the provisions that prohibit licensees from carrying concealed pistols on certain premises by excluding parking lots and certain restaurants, and making exceptions for retired police officers, private investigators, and certain other law enforcement officials while on duty.

- Reduce penalties for violations of the restricted premises provisions.

The bill would take effect on July 1, 2003.

License. Currently, a CCW license is valid for three years, and may be renewed. The bill would specify, instead, that a license issued before July 1, 2003 would be valid for three years, a license issued on or after July 1, 2003 would be valid for five years, and a license renewal would be issued in the same manner as an original license. The bill would delete the current provisions for a \$35 license renewal fee. The bill would also increase the CCW license fee, from \$55 to \$105; and delete the current requirement that an applicant pay an additional \$5 assessment for deposit in the Concealed Weapon Enforcement Fund. Under the bill, one year after a concealed pistol license had expired, the county clerk could destroy the record and maintain only a name index of it. In addition, the bill would specify that if an individual licensed to carry a concealed pistol moved to a different county, his or her license would remain valid until it expired, or was otherwise suspended or revoked. A license that had been lost, stolen, or defaced could be replaced for a \$10 replacement fee.

Under the bill, a county treasurer would be required to deposit \$41, rather than \$10, collected from each license fee in the county’s general fund. Of that deposit, \$26 would be credited to the county clerk, and \$15 would be credited to the county sheriff. Currently, the act specifies that the balance of the money from license fees is to be deposited in the general fund to the credit of the Department of State Police. The bill would add that the Department of State Police would be required to use the money received under the act to process fingerprints, and to reimburse the Federal Bureau of Investigation (FBI) for the costs associated with processing fingerprints submitted under the provisions of the bill.

In addition, the act currently requires that a license contain the licensee’s full name, date of birth, and street address. Under House Bill 6337, an address would not be required. In addition, the bill would

require that a license have the same dimensions as a Michigan operator license, and contain, in addition to current requirements, an indication whether the license was a duplicate, and an indication of exceptions authorized by the act that were applicable to the licensee.

Under the bill, the requirements for obtaining a CCW license would not apply to a peace officer or law enforcement officer from Canada.

License Suspension, Revocation, Denial. The bill would specify that, if a concealed weapons licensing board suspended or revoked a license, the license would be forfeited and would have to be returned to the board forthwith. The bill would also delete the current requirement that a verbatim record be taken in a hearing to appeal denial of a license.

License Applications. Under the act, an applicant must provide the Concealed Weapon Licensing Board with certain information on the application form. The bill would require, in addition, that an applicant authorize the board to access any medical record (in addition to medical records pertaining to the applicant's history of mental illness) pertaining to his or her qualifications for a license, and provide the board with a certificate or other proof stating that he or she had completed the pistol safety training course required under the act. The bill would also provide the following:

- An applicant could request that any records pertaining to his or her qualifications for a CCW license provided to the board be reviewed in a closed session. The session would only be closed for the purposes of reviewing such records. Medical records and personal identifying information would be confidential, would not be subject to disclosure under the Freedom of Information Act (FOIA) (MCL 15.231 to 15.245), and could not be disclosed to anyone except for purposes of the act or for law enforcement purposes, or unless the applicant was convicted of a felony involving a pistol. In addition, the applicant and his or her attorney would have the right to be present in the closed session. (Current law provides for a closed session of the board, as described above, to hear information about an applicant's mental health records.)
- The passport-quality photograph that is currently required would have to be current at the time of application.
- The board would have to issue or deny a license within 45 days, rather than 30 days as under current

law, after receiving a fingerprint comparison report. The board would have to issue a temporary license if the report was not received within 60 days, rather than 30 days as under current law.

Requirements for License. Currently, the act specifies that, in order to receive a license, and individual must not have been convicted of a misdemeanor violation for certain offenses for the eight years immediately prior to the license application. The bill would add the following to the list of prohibited offenses:

- Failing to stop when involved in a personal injury accident;
- Drunk driving, commercial vehicle;
- Operating an aircraft with alcohol with prior conviction;
- Operating an ORV under the influence, second or subsequent offense;
- Operating a snowmobile under the influence with prior conviction;
- Operating a vessel under the influence;
- Operating a locomotive under the influence;
- Entering without breaking;
- Indecent exposure.

Further, the act requires that an applicant must not have been convicted of *any other* misdemeanor within the preceding three years. Under the bill, instead of disqualifying an applicant who has been convicted of any other misdemeanor within the previous three years, the bill would disqualify an applicant who had been convicted of the following specific misdemeanors within the preceding three years:

- Refusal of a commercial vehicle driver to submit to a chemical test;
- Operating under the influence;
- Negligent failure to comply;
- Circumventing an ignition interlocking device;
- Operating a commercial vehicle with alcohol content;

- Operating an aircraft under the influence;
- Operating an ORV under the influence or having consumed a controlled substance;
- Operating a snowmobile under the influence;
- Operating a locomotive under the influence;
- Possession of controlled substances;
- Various penal code violations; and
- A violation of a law of the U.S., another state, or a local unit of government in Michigan or in another state that substantially corresponded to one described above.

In addition, the act currently specifies that the board must determine whether issuing a license to an applicant would threaten the safety of the applicant or any other person, and that a determination of this must be based upon clear and convincing evidence of civil infractions, crimes, personal protection orders or injunctions, or police reports or evidence of other actions that bear directly on the applicant's ability to carry a concealed pistol. The bill would refer to "repeated violations of the act," rather than "civil infractions."

Fingerprinting. The current requirements for fingerprinting an applicant, as part of the application process, would be amended to specify that fingerprinting would have to be done by the county sheriff or by a local police agency within five business days—rather than three business days—after an applicant requests them and pays a license fee, and on forms prescribed by the state police, rather than forms supplied by the FBI. Also, the Concealed Weapon Licensing Board could not issue a license until it received a fingerprint comparison report (unless it had not received a fingerprint comparison report within 60 days after the FBI had forwarded it to the Department of State Police, as provided under the act). The board could deny a license if an individual's fingerprints were not classifiable by the FBI. The bill would also delete current language that allows a sheriff to charge a fee not exceeding \$15 for the costs of taking fingerprints.

Carrying a Concealed Weapon. Currently, a license must be in the licensee's possession any time the concealed pistol is being carried, and the licensee must show the license and his or her driver license at a police officer's request. Failure to comply with a request or to carry the license is a state civil infraction, punishable by a fine of up to \$100. In

addition, a person who carries a concealed weapon and who is stopped by a police officer must disclose to the officer that he or she is carrying a concealed pistol. Failure to do so is a state civil infraction, and a first offense is punishable by a fine of up to \$500, suspension of the CCW license for six months, or both. For a second or subsequent offense, the fine may be up to \$1,000 and license revocation. The bill would specify, instead, that a subsequent offense within three years of a prior offense would be subject to the increased penalty. In addition, the bill would require that, when stopped by a peace officer, a licensee would have to *immediately* disclose to the officer that he or she was carrying a pistol. The bill would also specify that the current requirement that a licensee show his or her concealed pistol license and driver license would only apply when a licensee was carrying a concealed pistol.

Firearm Safety Training. Currently, the act requires that a safety training course include instruction on, among other things, firearms and the law, including civil liability issues. The bill would require, in addition, that the course include instruction on the use of deadly force, and would require that this be taught by an attorney or an individual trained in the use of deadly force. The bill would require that the training course include firing at least 30 rounds of ammunition.

Currently, the act specifies that the firearm safety educational requirements are waived for a person who was licensed as of July 1, 2001, and who is a peace officer or former peace officer; and for an individual licensed on or after July 1, 2001, the education requirements are waived except that such an individual must complete a 3-hour review course. The bill would specify, instead, that the educational requirements would be waived for a retired police officer or retired law enforcement officer, and that the educational requirements would be waived for an applicant who was applying for a license renewal, except that the applicant would have to certify that he or she had completed at least three hours' review of the required training, and had completed at least one hour of firing range time in the six months immediately preceding the subsequent application.

Restrictions on Carrying a Concealed Weapon. Under the act, a person who is licensed to carry a concealed weapon, or one who is exempt from licensure, cannot carry a concealed pistol on the premises of certain institutions, or "restricted areas," including the dining room, lounge, or bar area of licensed premises (a business licensed to serve alcohol). The bill would amend this provision to

specify that this prohibition would apply only to a bar or tavern where the business's primary source of income was the sale of alcoholic liquor by the glass and consumed on the premises. In addition, the bill would require that the Michigan Liquor Control Commission develop and make available to liquor license holders an appropriate sign stating that the establishment prohibited patrons from carrying concealed weapons. The owner or operator of a licensed establishment could, but would not be required to, post the sign. A record that a licensed establishment made available for purpose of enforcing these provisions would be exempt from disclosure under the FOIA.

The bill would also clarify current language regarding day care centers and entertainment facilities, and would specify that the parking areas of the places identified as restricted areas would not be restricted.

The bill would also specify that the restrictions on where a person could carry a concealed pistol would not apply to a licensee who was a retired police officer or retired law enforcement officer. The bill would define "retired police officer" or "retired law enforcement officer" to mean an individual who was a certified police officer or certified law enforcement officer (as defined under the Commission on Law Enforcement Standards Act ([MCL 28.602]) who had retired in good standing from his or her employment. The Concealed Weapon Licensing Board could require a letter from the law enforcement agency stating that the retired officer had retired in good standing.

In addition, the bill would specify that the restrictions on where a person could carry a concealed pistol would not apply to a licensee who was employed or contracted to provide security services at a place identified as a restricted area and who was required by his or her employer, or by the terms of a contract, to carry a concealed pistol on the premises, nor would the restrictions apply to an individual who was licensed as a private investigator or private detective under the Private Detective License Act (MCL 338.821 to 338.851).

Further, the restrictions would not apply to any of the following persons while on duty:

- A corrections officer with a county sheriff's department.
- A motor carrier officer or a Capitol security officer of the Department of State Police.

- A member of a sheriff's posse.

- An auxiliary officer or reserve officer of a police or sheriff's department.

- A Department of Corrections' parole or probation officer.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would adjust fee amounts and earmarking of those fees, and in addition would adjust the renewal period for licenses. The impact of the fee adjustments on the Department of State Police and counties relative to current practice are indeterminate and would fluctuate over time. County revenue would increase as a result of the adjustments; revenue earmarked for the department would likely decrease in the short term and increase in the long term. (For more detailed information, see the HFA's fiscal analysis dated 12-20-02.)

ARGUMENTS:

For:

The bill would amend current law to reduce some of the current restrictions on applications for a license to carry a concealed weapon. Under the bill, restaurants would be removed from the list of locations where carrying a gun is prohibited, except for those whose income is mostly derived from the sale of alcohol. Parking lots would also be removed from the list of "restricted areas," and licenses would be valid for five years, rather than three years.

In written testimony presented to the House committee, the Michigan Coalition for Responsible Gun Owners (MCRGO) reported that some of the provisions of Public Act 381 of 2000 give the impression that concealed pistol licensees are "in some vague way not really to be trusted," since the act included a number of locations where carrying a concealed pistol was prohibited. It was feared, MCRGO said, that licensees might suddenly become "homicidal maniacs" if they were allowed to carry guns in those locations. However, statistics now indicate that not one concealed pistol licensee has committed a crime with his or her pistol, according to MCRGO. The coalition maintains that this should provide the impetus to liberalize CCW rules and regulations.

Response:

Actually, there are few statistics to indicate whether or not crimes have been committed by CCW

licensees: Under the provisions of Public Act 381 of 2000, prosecuting attorneys must notify the issuing concealed weapon licensing board when a license holder is charged with a violent felony or other criminal offense, and must indicate to the board whether the crime involved the use of a pistol. The state police must also maintain a computerized data base to keep track of applicants. County licensing boards must suspend the licenses of those charged with felonies or specified criminal offenses, and compile the information in a report to the Department of State Police (DSP). However, in recent testimony before the House committee, it was alleged that some prosecutors fail to alert counties when CCW permit holders are arrested. Consequently, many counties don't report the required information. These omissions are revealed in the concealed Pistol Licensure Annual Report on statewide concealed pistol activity from July 1, 2001 to June 30, 2002, issued by the DSP. Consequently, information concerning crimes committed by concealed weapon licensees has never been entered into the police LEIN system. Also, many counties did not submit information on the actual cost of issuing a permit, as noted in the DSP's report, and some county clerks maintain that the actual cost to counties is much higher than has been estimated. These omissions are apparently being attributed to computer snags. However, it would, nevertheless, seem prudent not to relax the rules for concealed weapon licensing until the matter is cleared up.

Against:

Currently, the act specifies that a license applicant may request to have records relating to a history of mental illness reviewed by a concealed weapon licensing board in a closed session. However, the bill, as written, specifies that an applicant may request that *any* record, including medical records, be reviewed in a closed session. Doesn't the public have a right to know this information? Might this not create an environment that could lead to a lack of accountability from licensing boards?

Against:

Under the bill, licensed gun owners would be able to carry their weapons into some restaurants. Guns would be allowed in restaurants that served alcohol, except for those restaurants, such as bars and taverns, which derive the majority of their income from the sale of alcohol. The bill would require that the Michigan Liquor Control Commission make an appropriate sign available to license holders stating that the establishment prohibits patrons from carrying concealed weapons. This presents several problems.

First, it would seem to suggest that all bars and taverns are dangerous places where one can expect gun violence. More significantly, the bill also would seem to suggest that having more guns in restaurants is a good thing. If we acknowledge that it isn't safe to have guns in or near schools and churches, shouldn't we also acknowledge that they wouldn't be safe in an establishment where alcohol is served?

For:

Several police departments in the state have appealed to the legislature for a change in the new concealed weapons law as it pertains to reserve police officers. Because reserve officers are not exempt from the CCW licensing requirements, and are subject to the restrictions on carrying concealed weapons on certain premises, including school grounds, bars, arenas, etc., it has become impossible for police departments to continue using these volunteers to assist them with security and crowd control functions at school and community events. It makes no sense to bar armed police officers from the named locations, as these are the very sites that are often in need of additional police presence. Without the use of reserve forces, many of whom are volunteers, police agencies across Michigan are facing severe manpower shortages and cannot afford to provide the level of public safety that their communities have come to expect. The bill will provide relief, by exempting reserve officers from restrictions on carrying a pistol in the 'gun-free zones' while on duty.

Against:

It should be noted that reserve (or auxiliary) police officers are often volunteers, and may not have received police training. While some local police departments provide training for their reserve officers, there is no statewide standard for training reserves, nor any requirement that they be trained. Is it wise, then, to authorize these volunteers to carry weapons on the restricted premises?

Response:

This legislation (unlike earlier proposals) still requires reserve police officers to obtain a CCW license in order to carry a weapon – just as other citizens must do. This means they must at least complete the required gun safety course and firing range practice required under the CCW law.

For:

The bill would exempt retired police officers from the requirement to take an eight-hour gun safety course in order to obtain a CCW license. Since these individuals have already undertaken extensive police training, including training in shooting and handling

firearms, it is ridiculous to require them to take the standard courses offered to untrained citizens. In fact, these retired officers are often among those instructing these courses!

Against:

The CCW reform legislation was supported by many because it leveled the playing field for ordinary citizens, making the process of obtaining a permit much more democratic. It changed the process from one that benefited only favored classes of citizens (e.g., retired police officers) into a process where anyone meeting the stated requirements must be issued a permit. These bills would reinstate some of that “favored” treatment for certain classes of law enforcement personnel. It should be noted that if law enforcement feels hampered by the new rules, ordinary citizens also are inconvenienced. The restrictions should be lifted for ordinary law abiding citizens, not just law enforcement personnel.

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■ 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.