

HOUSE BILL No. 5972

March 18, 2010, Introduced by Reps. Meltzer, Sheltroun, Walsh, Haveman, Proos, Kurtz, Elsenheimer, Lori, Moss, Denby, Lund, DeShazor, Knollenberg, Daley, Lahti, Pavlov, Pearce and Marleau and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 1927 PA 372, entitled

"An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act,"

by amending sections 1, 2, and 2b (MCL 28.421, 28.422, and 28.422b), section 1 as amended by 2008 PA 407, section 2 as amended by 2008 PA 406, and section 2b as amended by 2001 PA 199.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Felony" means that term as defined in section 1 of
3 chapter I of the code of criminal procedure, 1927 PA 175, MCL

1 761.1, or a violation of a law of the United States or another
2 state that is designated as a felony or that is punishable by death
3 or by imprisonment for more than 1 year.

4 (b) "Firearm" means a weapon from which a dangerous projectile
5 may be propelled by an explosive, or by gas or air. Firearm does
6 not include a smooth bore rifle or handgun designed and
7 manufactured exclusively for propelling by a spring, or by gas or
8 air, BB's not exceeding .177 caliber.

9 (c) "Misdemeanor" means a violation of a penal law of this
10 state or violation of a local ordinance substantially corresponding
11 to a violation of a penal law of this state that is not a felony or
12 a violation of an order, rule, or regulation of a state agency that
13 is punishable by imprisonment or a fine that is not a civil fine,
14 or both.

15 (d) "Peace officer" means, except as otherwise provided in
16 this act, an individual who is employed as a law enforcement
17 officer, as that term is defined under section 2 of the commission
18 on law enforcement standards act, 1965 PA 203, MCL 28.602, by this
19 state or another state, a political subdivision of this state or
20 another state, or the United States, and who is required to carry a
21 firearm in the course of his or her duties as a law enforcement
22 officer.

23 (e) "Pistol" means a loaded or unloaded firearm that is 30
24 inches or less in length, or a loaded or unloaded firearm that by
25 its construction and appearance conceals it as a firearm.

26 (f) "Purchaser" means a person who receives a pistol from
27 another person by purchase or gift.

1 (G) "REGISTERING AUTHORITY" MEANS THE COMMISSIONER OR CHIEF OF
2 POLICE OR HIS OR HER DESIGNEE OF A CITY, VILLAGE, OR TOWNSHIP IN
3 WHICH AN INDIVIDUAL RESIDES, OR THE COUNTY SHERIFF OR HIS OR HER
4 DESIGNEE IN WHICH AN INDIVIDUAL RESIDES IN THE PARTS OF A COUNTY
5 NOT INCLUDED WITHIN A CITY, VILLAGE, OR TOWNSHIP HAVING AN
6 ORGANIZED POLICE DEPARTMENT.

7 (H) ~~(g)~~ "Reserve peace officer", "auxiliary officer", or
8 "reserve officer" means, except as otherwise provided in this act,
9 an individual authorized on a voluntary or irregular basis by a
10 duly authorized police agency of this state or a political
11 subdivision of this state to act as a law enforcement officer, who
12 is responsible for the preservation of the peace, the prevention
13 and detection of crime, and the enforcement of the general criminal
14 laws of this state, and who is otherwise eligible to possess a
15 firearm under this act.

16 (I) ~~(h)~~ "Retired police officer" or "retired law enforcement
17 officer" means an individual who was a police officer or law
18 enforcement officer who was certified as described under section 9a
19 of the commission on the law enforcement standards act, 1965 PA
20 203, MCL 28.609a, and retired in good standing from his or her
21 employment as a police officer or law enforcement officer.

22 (J) ~~(i)~~ "Seller" means a person who sells or gives a pistol to
23 another person.

24 (K) ~~(j)~~ "State court judge" means a judge of the district
25 court, circuit court, probate court, or court of appeals or justice
26 of the supreme court of this state who is serving either by
27 election or appointment.

1 (I) ~~(k)~~—"State court retired judge" means a judge or justice
2 described in subdivision ~~(j)~~ **(K)** who is retired, or a retired judge
3 of the recorders court.

4 Sec. 2. ~~(1) Except as otherwise provided in this section, a~~
5 ~~person shall not purchase, carry, possess, or transport a pistol in~~
6 ~~this state without first having obtained a license for the pistol~~
7 ~~as prescribed in this section.~~

8 (1) ~~(2)~~A person who brings a pistol into this state,
9 **INCLUDING A PERSON** who is on leave from active duty with the armed
10 forces of the United States or who has been discharged from active
11 duty with the armed forces of the United States shall ~~obtain a~~
12 ~~license for~~ **REGISTER** the pistol **WITH THE REGISTERING AUTHORITY**
13 within 30 days after his or her arrival in this state.

14 ~~(3) The commissioner or chief of police of a city, township,~~
15 ~~or village police department that issues licenses to purchase,~~
16 ~~carry, possess, or transport pistols, or his or her duly authorized~~
17 ~~deputy, or the sheriff or his or her duly authorized deputy, in the~~
18 ~~parts of a county not included within a city, township, or village~~
19 ~~having an organized police department, in discharging the duty to~~
20 ~~issue licenses shall with due speed and diligence issue licenses to~~
21 ~~purchase, carry, possess, or transport pistols to qualified~~
22 ~~applicants residing within the city, village, township, or county,~~
23 ~~as applicable unless he or she has probable cause to believe that~~
24 ~~the applicant would be a threat to himself or herself or to other~~
25 ~~individuals, or would commit an offense with the pistol that would~~
26 ~~violate a law of this or another state or of the United States. An~~
27 ~~applicant is qualified if all of the following circumstances exist:~~

1 ~~—— (a) The person is not subject to an order or disposition for~~
2 ~~which he or she has received notice and an opportunity for a~~
3 ~~hearing, and which was entered into the law enforcement information~~
4 ~~network pursuant to any of the following:~~

5 ~~—— (i) Section 464a(1) of the mental health code, 1974 PA 258, MCL~~
6 ~~330.1464a.~~

7 ~~—— (ii) Section 5107 of the estates and protected individuals~~
8 ~~code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA~~
9 ~~642.~~

10 ~~—— (iii) Section 2950(10) of the revised judicature act of 1961,~~
11 ~~1961 PA 236, MCL 600.2950.~~

12 ~~—— (iv) Section 2950a(7) of the revised judicature act of 1961,~~
13 ~~1961 PA 236, MCL 600.2950a.~~

14 ~~—— (v) Section 14 of 1846 RS 84, MCL 552.14.~~

15 ~~—— (vi) Section 6b(5) of chapter V of the code of criminal~~
16 ~~procedure, 1927 PA 175, MCL 765.6b, if the order has a condition~~
17 ~~imposed under section 6b(3) of chapter V of the code of criminal~~
18 ~~procedure, 1927 PA 175, MCL 765.6b.~~

19 ~~—— (vii) Section 16b(1) of chapter IX of the code of criminal~~
20 ~~procedure, 1927 PA 175, MCL 769.16b.~~

21 ~~—— (b) The person is 18 years of age or older or, if the seller~~
22 ~~is licensed under 18 USC 923, is 21 years of age or older.~~

23 ~~—— (c) The person is a citizen of the United States and is a~~
24 ~~legal resident of this state. For the purposes of this section, a~~
25 ~~person shall be considered a legal resident of this state if any of~~
26 ~~the following apply:~~

27 ~~—— (i) The person has a valid, lawfully obtained Michigan driver~~

1 ~~license issued under the Michigan vehicle code, 1949 PA 300, MCL~~
2 ~~257.1 to 257.923, or an official state personal identification card~~
3 ~~issued under 1972 PA 222, MCL 28.291 to 28.300.~~

4 ~~—— (ii) The person is lawfully registered to vote in this state.~~

5 ~~—— (iii) The person is on active duty status with the United States~~
6 ~~armed forces and is stationed outside of this state, but the~~
7 ~~person's home of record is in this state.~~

8 ~~—— (iv) The person is on active duty status with the United States~~
9 ~~armed forces and is permanently stationed in this state, but the~~
10 ~~person's home of record is in another state.~~

11 ~~—— (d) A felony charge or a criminal charge listed in section 5b~~
12 ~~against the person is not pending at the time of application.~~

13 ~~—— (e) The person is not prohibited from possessing, using,~~
14 ~~transporting, selling, purchasing, carrying, shipping, receiving,~~
15 ~~or distributing a firearm under section 224f of the Michigan penal~~
16 ~~code, 1931 PA 328, MCL 750.224f.~~

17 ~~—— (f) The person has not been adjudged insane in this state or~~
18 ~~elsewhere unless he or she has been adjudged restored to sanity by~~
19 ~~court order.~~

20 ~~—— (g) The person is not under an order of involuntary commitment~~
21 ~~in an inpatient or outpatient setting due to mental illness.~~

22 ~~—— (h) The person has not been adjudged legally incapacitated in~~
23 ~~this state or elsewhere. This subdivision does not apply to a~~
24 ~~person who has had his or her legal capacity restored by order of~~
25 ~~the court.~~

26 ~~—— (i) The person correctly answers 70% or more of the questions~~
27 ~~on a basic pistol safety review questionnaire approved by the~~

1 ~~department of state police and provided to the individual free of~~
2 ~~charge by the licensing authority. If the person fails to correctly~~
3 ~~answer 70% or more of the questions on the basic pistol safety~~
4 ~~review questionnaire, the licensing authority shall inform the~~
5 ~~person of the questions he or she answered incorrectly and allow~~
6 ~~the person to attempt to complete another basic pistol safety~~
7 ~~review questionnaire. The person shall not be allowed to attempt to~~
8 ~~complete more than 2 basic pistol safety review questionnaires on~~
9 ~~any single day. The licensing authority shall allow the person to~~
10 ~~attempt to complete the questionnaire during normal business hours~~
11 ~~on the day the person applies for his or her license.~~

12 ~~—— (4) Applications for licenses under this section shall be~~
13 ~~signed by the applicant under oath upon forms provided by the~~
14 ~~director of the department of state police. Licenses to purchase,~~
15 ~~carry, possess, or transport pistols shall be executed in~~
16 ~~quadruplicate upon forms provided by the director of the department~~
17 ~~of state police and shall be signed by the licensing authority.~~
18 ~~Four copies of the license shall be delivered to the applicant by~~
19 ~~the licensing authority. A license is void unless used within 10~~
20 ~~days after the date it is issued.~~

21 (2) ~~(5)~~—If an individual purchases or otherwise acquires a
22 pistol, the seller shall fill out the license forms describing the
23 pistol, together with **COMPLETE A RECORD IN QUADRUPLICATE ON A FORM**
24 **PROVIDED BY THE DEPARTMENT OF STATE POLICE. THE RECORD SHALL**
25 **DESCRIBE THE PISTOL AND SPECIFY** the date of sale or acquisition. 7
26 and **THE SELLER SHALL** sign his or her name in ink indicating that
27 the pistol was sold to or otherwise acquired by the purchaser. The

1 purchaser shall also sign his or her name in ink indicating the
2 purchase or other acquisition of the pistol from the seller. The
3 seller may retain a copy of the ~~license as a~~ record of the
4 transaction. The purchaser shall receive 3 copies of the ~~license~~
5 **RECORD**. The purchaser shall return 2 copies of the ~~license~~**RECORD**
6 to the ~~licensing~~**REGISTERING** authority within 10 days after the
7 date the pistol is purchased or acquired. The return of the copies
8 to the ~~licensing~~**REGISTERING** authority may be made in person or may
9 be made by first-class mail or certified mail sent within the 10-
10 day period to the proper address of the ~~licensing~~**REGISTERING**
11 authority. A purchaser who fails to comply with the requirements of
12 this subsection is responsible for a state civil infraction and may
13 be fined not more than \$250.00. If a purchaser is found responsible
14 for a state civil infraction under this subsection, the court shall
15 notify the department of state police of that determination.

16 (3) ~~(6)~~ Within 48 hours after receiving the ~~license~~ copies
17 returned under subsection ~~(5)~~ **(1) OR (2)**, the ~~licensing~~**REGISTERING**
18 authority shall forward 1 copy ~~of the license~~ to the department of
19 state police. The ~~licensing~~**REGISTERING** authority shall retain the
20 other copy ~~of the license~~ as an official record for not less than 6
21 years. Within 10 days after receiving the ~~license~~ copies returned
22 under subsection ~~(5)~~ **(1) OR (2)**, the ~~licensing~~**REGISTERING**
23 authority shall electronically enter the information into the
24 pistol entry database as required by the department of state police
25 if it has the ability to electronically enter that information. If
26 the ~~licensing~~**REGISTERING** authority does not have that ability, the
27 ~~licensing~~**REGISTERING** authority shall provide that information to

1 the department of state police in a manner otherwise required by
2 the department of state police. Any ~~licensing~~ authority that
3 provided pistol descriptions to the department of state police
4 under former section 9 of this act shall continue to provide pistol
5 descriptions to the department of state police under this
6 subsection. The purchaser has the right to obtain a copy of the
7 information placed in the pistol entry database under this
8 subsection to verify the accuracy of that information. The
9 ~~licensing~~ **REGISTERING** authority may charge a fee not to exceed
10 \$1.00 for the cost of providing the copy. The ~~licensee~~ **PURCHASER**
11 may carry, use, possess, and transport the pistol for 30 days
12 beginning on the date of purchase or acquisition only while he or
13 she is in possession of his or her copy of the ~~license~~ **REGISTRATION**
14 **OR A TRANSFER RECORD UNDER SUBSECTION (4)**. However, the person is
15 not required to have the ~~license~~ **REGISTRATION OR TRANSFER RECORD** in
16 his or her possession while carrying, using, possessing, or
17 transporting the pistol after this period.

18 (4) ~~(7)~~ This section does not apply to the purchase of pistols
19 from wholesalers by dealers regularly engaged in the business of
20 selling pistols at retail, or to the sale, barter, or exchange of
21 pistols kept as relics or curios not made for modern ammunition or
22 permanently deactivated. This section does not prevent the transfer
23 of ownership of pistols that are inherited if ~~the license to~~
24 ~~purchase~~ **A TRANSFER RECORD** is ~~approved by~~ **FILED WITH** the
25 ~~commissioner or chief of police, sheriff, or their authorized~~
26 ~~deputies,~~ **REGISTERING AUTHORITY** and signed by the personal
27 representative of the estate or by the next of kin having authority

1 to dispose of the pistol.

2 (5) ~~(8)~~—An individual who is not a resident of this state is
3 not required to ~~obtain a license~~ **REGISTER A PISTOL** under this
4 section if all of the following conditions apply:

5 (a) The individual is licensed in his or her state of
6 residence to purchase, carry, or transport a pistol.

7 (b) The individual is in possession of the license described
8 in subdivision (a).

9 (c) The individual is the owner of the pistol he or she
10 possesses, carries, or transports.

11 (d) The individual possesses the pistol for a lawful purpose
12 as that term is defined in section 231a of the Michigan penal code,
13 1931 PA 328, MCL 750.231a.

14 (e) The individual is in this state for a period of 180 days
15 or less and does not intend to establish residency in this state.

16 (6) ~~(9)~~—An individual who is a nonresident of this state shall
17 present the license described in subsection ~~(8)(a)~~ **(5)(A)** upon the
18 demand of a police officer. An individual who violates this
19 subsection is guilty of a misdemeanor punishable by imprisonment
20 for not more than 90 days or a fine of not more than \$100.00, or
21 both.

22 (7) ~~(10)~~—The ~~licensing~~ **REGISTERING** authority may require a
23 person claiming active duty status with the United States armed
24 forces to provide proof of 1 or both of the following:

25 (a) The person's home of record.

26 (b) Permanent active duty assignment in this state.

27 (8) ~~(11)~~—This section does not apply to a person who is

1 ~~younger than the age required under subsection (3)(b) and~~ **LESS THAN**
2 **18 YEARS OF AGE** who possesses a pistol if all of the following
3 conditions apply:

4 (a) The person is not otherwise prohibited from possessing
5 that pistol.

6 (b) The person is at a recognized target range.

7 (c) The person possesses the pistol for the purpose of target
8 practice or instruction in the safe use of a pistol.

9 (d) The person's parent or guardian is physically present and
10 supervising the person.

11 (e) The owner of the pistol is physically present.

12 **(9)** ~~(12)~~ This section does not apply to a person who possesses
13 a pistol if all of the following conditions apply:

14 (a) The person is not otherwise prohibited from possessing a
15 pistol.

16 (b) The person is at a recognized target range or shooting
17 facility.

18 (c) The person possesses the pistol for the purpose of target
19 practice or instruction in the safe use of a pistol.

20 (d) The owner of the pistol is physically present and
21 supervising the use of the pistol.

22 **(10)** ~~(13)~~ The ~~licensing~~ **REGISTERING** authority shall ~~shall~~ **MAY**
23 provide a basic pistol safety brochure to each ~~applicant for a~~
24 ~~license under this section before the applicant answers the basic~~
25 ~~pistol safety review questionnaire~~ **INDIVIDUALS REGISTERING OR**
26 **RECORDING THE TRANSFER OF A PISTOL UNDER THIS SECTION.** A basic
27 pistol safety brochure shall contain, but is not limited to

1 providing, information on all of the following subjects:

2 (a) Rules for safe handling and use of pistols.

3 (b) Safe storage of pistols.

4 (c) Nomenclature and description of various types of pistols.

5 (d) The responsibilities of owning a pistol.

6 ~~(14) The basic pistol safety brochure shall be supplied in~~
7 ~~addition to the safety pamphlet required by section 9b.~~

8 (11) ~~(15)~~The basic pistol safety brochure ~~required~~**DESCRIBED**
9 in subsection ~~(13)~~**(10)** shall be produced by a national nonprofit
10 membership organization that provides voluntary pistol safety
11 programs that include training individuals in the safe handling and
12 use of pistols.

13 (12) ~~(16)~~A person who forges any matter on an ~~application for~~
14 ~~a license~~**A REGISTRATION FORM OR TRANSFER RECORD REQUIRED** under
15 this section is guilty of a felony ~~—~~punishable by imprisonment for
16 not more than 4 years or a fine of not more than \$2,000.00, or
17 both.

18 (13) ~~(17)~~A ~~licensing~~**REGISTERING** authority shall implement
19 this section during all of the ~~licensing~~**REGISTERING** authority's
20 normal business hours. ~~and shall set hours for implementation that~~
21 ~~allow an applicant to use the license within the time period set~~
22 ~~forth in subsection (4).~~

23 Sec. 2b. (1) Except as provided in subsection (6), upon entry
24 of an order or disposition into the law enforcement information
25 network under any provision of law described in section ~~2(3)(a)~~
26 **5B(7)(D)**, the department of state police shall immediately send
27 written notice of that entry to the person who is the subject of

1 the order or disposition. The notice shall be sent by first-class
2 mail to the last known address of the person. The notice shall
3 include at least all of the following:

4 (a) The name of the person.

5 (b) The date the order or disposition was entered into the law
6 enforcement information network.

7 (c) A statement that the person cannot obtain a license to
8 purchase a pistol or obtain a concealed weapon license until the
9 order or disposition is removed from the law enforcement
10 information network.

11 (d) A statement that the person may request that the state
12 police correct or expunge inaccurate information entered into the
13 law enforcement information network.

14 (2) A person who is the subject of an order entered into the
15 law enforcement information network under any provision of law
16 described in section ~~2(3)(a)~~**5B(7)(D)** may request that the
17 department of state police do either of the following:

18 (a) Amend an inaccuracy in the information entered into the
19 law enforcement information network under any provision of law
20 described in section ~~2(3)(a)~~**5B(7)(D)**.

21 (b) Expunge the person's name and other information concerning
22 the person from the law enforcement information network regarding 1
23 or more specific entries in the law enforcement information network
24 under any provision of law described in section ~~2(3)(a)~~**5B(7)(D)**
25 because 1 or more of the following circumstances exist:

26 (i) The person is not subject to an order of involuntary
27 commitment in an inpatient or outpatient setting due to mental

1 illness.

2 (ii) The person is not subject to an order or disposition
3 determining that the person is legally incapacitated.

4 (iii) The person is not subject to a personal protection order
5 issued under ~~any~~**EITHER** of the following:

6 (A) Section 2950 of the revised judicature act of 1961, 1961
7 PA 236, MCL 600.2950.

8 (B) Section 2950a of the revised judicature act of 1961, 1961
9 PA 236, MCL 600.2950a.

10 ~~—— (C) Section 14 of 1846 RS 84, MCL 552.14.~~

11 (iv) The person is not subject to an order for release subject
12 to protective conditions that prohibits the purchase or possession
13 of a firearm by the person issued under section 6b of chapter V of
14 the code of criminal procedure, 1927 PA 175, MCL 765.6b.

15 (3) Before the expiration of 30 days after a request is made
16 to amend an inaccuracy in the law enforcement information network
17 under subsection (2)(a) or to expunge 1 or more specific entries
18 from the law enforcement information network under subsection
19 (2)(b)(i) to (iv), the department of state police shall conduct an
20 investigation concerning the accuracy of the information contained
21 in the law enforcement information network, either grant or deny
22 the request and provide the person with written notice of that
23 grant or denial. A notice of denial shall include a statement
24 specifying the basis of the denial, and that a person may appeal
25 the denial ~~pursuant to~~**UNDER** the administrative procedures act of
26 1969, 1969 PA 306, MCL 24.201 to 24.328.

27 (4) If the department of state police refuses a request by a

1 person for amendment or expunction under subsection (2), or fails
2 to act within 30 days after receiving the request under subsection
3 (2), the person may request a hearing before a hearing officer
4 appointed by the department of state police for a determination of
5 whether information entered into the law enforcement information
6 network should be amended or expunged because it is inaccurate or
7 false. The department of state police shall conduct the hearing
8 ~~pursuant to~~ **UNDER** the administrative procedures act of 1969, 1969
9 PA 306, MCL 24.201 to 24.328.

10 (5) Information contained in an order or disposition filed
11 with the department of state police under any provision of law
12 described in section ~~2(3)(a)(i) to (vii)~~ **5B(7)(D)** is exempt from
13 public disclosure under the freedom of information act, 1976 PA
14 442, MCL 15.231 to 15.246.

15 (6) The department of state police shall not send written
16 notice of an entry of an order or disposition into the law
17 enforcement information network as required for a personal
18 protection order issued under section 2950 or 2950a of the revised
19 judiciary act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
20 until that department has received notice that the respondent of
21 the order has been served with or has received notice of the
22 personal protection order.

23 Enacting section 1. This amendatory act does not take effect
24 unless Senate Bill No. _____ or House Bill No. 5973 (request no.
25 05553'09) of the 95th Legislature is enacted into law.