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**SFA**



**BILL ANALYSIS**

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House Bill 4530 (as enrolled)  
Sponsor: Representative Michael Green  
House Committee: Conservation and Outdoor Recreation  
Senate Committee: Hunting, Fishing and Forestry

**PUBLIC ACT 381 of 2000**

Date Completed: 2-27-01

### **CONTENT**

The bill amended the handgun licensure Act to do all of the following:

- Revise criteria for obtaining a license to carry a concealed pistol, including increasing the minimum age from 18 to 21, and requiring an applicant to document knowledge and training in the safe use and handling of a pistol.
- Require a concealed weapon licensing board to issue a license if the criteria are met.
- Set a \$55 application fee and a \$5 assessment fee.
- Require a licensing board to issue or deny a license within 30 days after receiving a fingerprint comparison report.
- Allow the appeal of license denials to the circuit court.
- Require a prosecuting attorney to notify a licensing board of a criminal charge against a license holder.
- Prohibit a licensed individual from carrying a concealed pistol on certain premises.
- Provide for the issuance of a temporary license for up to 180 days.
- Create the "Concealed Weapon Enforcement Fund".
- Require the State Police to create and maintain a computerized database of applicants, and report annually to the Legislature.
- Require county sheriffs, local law enforcement agencies, and county clerks to provide concealed weapon application kits to individuals wishing to apply for a license.
- Impose penalties for carrying concealed pistols while under the influence of alcohol or a controlled substance.
- Require the State Police to notify the owner of a lost or stolen firearm before disposing of it.
- Repeal provisions pertaining to license fees, concealed weapon licensing boards, firearm forfeiture, and renewal fees.

The bill also appropriates \$1 million to the Department of State Police for trigger locks, application kits, fingerprinting, and other purposes.

The bill takes effect July 1, 2001. It is described in detail below.

#### Legislative Intent

The bill provides: "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 a license 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."

#### Concealed Weapon Licensing Board

As current law provides, the bill requires each county to have a concealed weapon licensing board consisting of the county prosecuting attorney, the county sheriff, and the Director of the State Police, or their designees.

Under the bill, if the county prosecuting attorney decides that he or she does not want to be a member of the board, he or she must notify the county board of commissioners in writing. The county board of commissioners then must appoint a replacement for the prosecuting attorney who is a firearms instructor and meets the qualifications described in the bill. That person must serve on the board in place of the prosecuting attorney for the remaining term unless removed for cause by the county board of commissioners. If the appointed person vacates the concealed weapon licensing board during the prosecutor's term of office, the county board of

commissioners must appoint a replacement who is a qualified firearms instructor.

If the prosecuting attorney chooses not to be a member of the licensing board, he or she must be notified of all applications received by the board; be given an opportunity to object to the granting of a license to carry a concealed pistol and present evidence bearing directly on an applicant's suitability to carry a concealed pistol safely; and disclose to the board any information of which he or she has actual knowledge that bears directly on an applicant's suitability to carry a concealed pistol safely.

The county prosecuting attorney or designee must serve as chairperson of the board unless he or she does not want to be a member, in which case the board must elect a chairperson. As currently provided, the county clerk must serve as clerk of the board.

The bill specifies that the board has exclusive authority to issue, deny, revoke, or suspend a license to carry a concealed pistol. The board may convene up to three panels to assist it in evaluating applicants. The panels do not have authority to issue, deny, revoke, or suspend a license.

The board may investigate an applicant only to determine whether he or she is eligible to receive a license, and the investigation must end after that determination is made. The board may require the applicant to appear before it at a mutually agreed-upon time for a conference. The applicant's failure or refusal to appear without valid reason before the board is grounds for the board to deny issuance of a license to that applicant.

### Concealed Weapon License Application

In order to obtain a license to carry a concealed pistol, the bill requires an individual to apply to the concealed weapon licensing board in his or her county. The application must be filed with the county clerk during normal business hours. The application must be on a form provided by the Director of the State Police and allow the applicant to designate whether he or she seeks a temporary license. The application must be signed by the applicant under oath administered by the county clerk or his or her representative.

The application must contain the applicant's legal name, residential address, and date of birth, as well as a passport quality photograph. If the applicant resides in a city, village, or township that has a police department, the application must include that information. The application also must contain a statement of the following:

- That the applicant meets all criteria for a license.
- Authority to the board to gain access to any record pertaining to the applicant's qualifications.
- Whether the applicant has a history of mental illness that would disqualify him or her from receiving a license to carry a concealed pistol, and authority to the board to gain access to the applicant's mental health records. (The applicant may request that information to be reviewed in a closed session, at which the applicant and his or her representative may be present.) The bill specifies that this information is confidential.
- Whether the applicant has ever been convicted in the State or elsewhere for any felony or misdemeanor.
- Whether the applicant is dishonorably discharged from the U.S. armed forces.
- The facts supporting the issuance of a temporary license, if the applicant seeks a temporary license.
- The names, residential addresses, and telephone numbers of two individuals who are the applicant's references.

The application form must contain a conspicuous warning that the application is executed under oath and that intentionally making a material false statement on the application is a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,500. The board must retain a copy of each application for a license to carry a concealed pistol as an official record.

(Currently, an application first must be approved by the supervisor, commissioner or chief of police, or marshal of the city, village, or township in which the applicant resides. If the application is not approved by the local official, the applicant may appeal to the concealed weapon licensing board. A license may

not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons, and is a suitable person to be licensed. The bill does not include these provisions.)

#### Licensure Requirements and Qualifications

**Fees.** The bill requires each applicant to pay a \$55 fee, plus a \$5 assessment fee for deposit into the Concealed Weapon Enforcement Fund when filing the application. The county treasurer must forward \$45 to the State Treasurer, who must deposit it in the General Fund to the credit of the State Police. The county treasurer must deposit \$10 of each fee in the county general fund to the credit of the county clerk. Each county must report to the Senate and House Fiscal Agencies by October 1 of each year its costs per applicant to implement this provision. The State or a local unit of government may not charge any other fee or assessment (except a fingerprint fee) in connection with a concealed pistol license.

(Currently, an applicant must pay a \$10 licensing fee to the county clerk, who must remit \$2 to the State. Local units of government also may charge a concealed weapon license application fee of up to \$5. In addition, an applicant must pay a \$10 fee in order to appeal a local official's denial of an application to the licensing board.)

**Criteria.** The bill requires a licensing board to issue a license to an applicant if it determines that the applicant is 21 years of age or older, has knowledge and has had training in the safe use and handling of a pistol by the successful completion of a pistol safety training course or class, is a U.S. citizen or a resident legal alien, is a resident of this State, and has lived in the State for at least six months. The board may waive the six-month residency requirement for a temporary license if the board determines there is probable cause to believe the safety of the applicant or a member of his or her family is endangered by the applicant's inability to obtain a license immediately. (The pistol safety training course must meet the requirements of the bill, be available to the general public, and be presented by a law enforcement agency, junior or community college, college, or public or private institution or organization or firearms training school.)

In addition, the board must determine that the applicant:

- Is not the subject of an order or disposition under various sections of the Mental Health Code, the Revised Probate Code, the Estates and Protected Individuals Code (EPIC), the Revised Judicature Act, or the Code of Criminal Procedure (described below).
- Is not prohibited from possessing, using,

transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under the Michigan Penal Code.

- Has never been convicted of a felony in the State or elsewhere, and is not subject to a pending felony charge.
- Has not been dishonorably discharged from the U.S. armed forces.
- Has not been convicted of a specified misdemeanor (described below) in the previous eight years.
- Has not been convicted of any other misdemeanor in the State or elsewhere in the previous three years.
- Has not been found guilty but mentally ill and has not offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
- Has never been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- Does not have a diagnosed mental illness at the time of application regardless of whether the applicant is receiving treatment.
- Is not under a court order of legal incapacity in this State or elsewhere.
- Has knowledge and has had training in the safe use and handling of a pistol (as described below).

Further, the board must determine that issuing a license is not detrimental to the safety of the applicant or to any other individual. This determination must be based on clear and convincing evidence of civil infractions, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions or statements of the applicant that bear directly on his or her ability to carry a concealed pistol.

Through the Law Enforcement Information Network (LEIN), the county sheriff on behalf of the licensing board must verify the requirements listed above (except regarding discharge from the U.S. armed forces). The sheriff must report the findings to the board. If the applicant resides in a city, village, or township that has a police department, the board must contact that police department to determine only whether it has any information relevant to the investigation of whether the applicant is eligible to receive a license.

Upon entry of a court order or conviction of the listed prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm, the State Police immediately must enter the order or conviction into the LEIN. For purposes of the Act, information of the court order or conviction may not be removed from the LEIN, but may be moved to a separate file intended for the use of the county gun boards, the courts, and other government entities as necessary and exclusively to

determine eligibility for licensure.

As noted above, the applicant must not be the subject of an order or disposition under any of the following:

- Section 464a of the Mental Health Code (which concerns people who are involuntarily hospitalized or involuntarily undergoing alternative treatment).
- Section 5107 of EPIC or former Section 444a of the Revised Probate Code (which refer to people who are legally incapacitated).
- Sections 2950 and 2950a of the Revised Judicature Act (which govern domestic violence and stalking personal protection orders).
- Section 6b(3) of Chapter V of the Code of Criminal Procedure (which refers to a defendant who is released subject to an order prohibiting him or her from purchasing or possessing a firearm).
- Section 16b of Chapter IX of the Code of Criminal Procedure (which refers to someone who is found not guilty by reason of insanity).

The bill defines “mental illness” as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, including clinical depression. “Treatment” means care or any therapeutic service, including the administration of a drug, and any other service for the treatment of a mental illness.

(The current Act also provides that an applicant must not be subject to an order or disposition under generally the same sections as those cited above. The Act also provides that a person must not have been adjudged insane unless he or she has been restored to sanity by court order, and must not be under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.)

Also, as noted above, the bill provides that an applicant must not have been convicted of any of the following misdemeanors within the preceding eight years:

- Drunk driving, second offense.
- Reckless driving.
- Driving with a suspended or revoked license, second or subsequent offense.
- Hindering or obstructing a weights and measures enforcement officer.
- Hindering, obstructing, assaulting, or injuring the Director of the Department of Agriculture or his or her authorized representative.
- Unauthorized possession of a controlled substance, controlled substance analogue, or official prescription form.
- Displaying sexually explicit material to minors.

- Assault or domestic assault.
- Aggravated assault or aggravated domestic assault.
- Fourth-degree child abuse.
- Accosting, enticing, or soliciting a child for immoral purposes.
- Vulnerable adult abuse.
- Solicitation to commit a felony.
- Impersonating a sheriff, conservation officer, coroner, constable, or police officer.
- Illegal sale of a firearm or ammunition.
- Illegal sale of a self-defense spray.
- Sale or possession of a switchblade.
- Improper transportation of a firearm.
- Failure to have a pistol inspected.
- Accepting a pistol in pawn.
- Failure to register the purchase of a firearm or a firearm component.
- Improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol.
- Intentionally aiming a firearm without malice.
- Intentionally discharging a firearm without malice.
- Possessing a firearm on prohibited premises.
- Brandishing a firearm in public.
- Possession of a firearm by an individual under 18.
- Intentionally discharging a firearm aimed without malice causing injury.
- Being the parent of a minor who possessed a firearm in a weapon free school zone.
- Setting a spring gun or other such device.
- Possessing a firearm while under the influence of liquor or a drug.
- Committing a weapon free school zone violation.
- Stalking.
- Reckless, careless, or negligent use of a firearm resulting in injury or death, or resulting in property damage.
- Reckless discharge of a firearm.
- Violating a law of the United States, another state, or a local unit of government of this or another state substantially corresponding to a violation described above.

The bill defines “convicted” as a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition for a violation that would be a crime if committed by an adult.

(Currently, an applicant must not have been convicted of a felony or confined for a felony conviction during the eight years preceding application, and a felony charge must not be pending against the person at the time of application.)

Safety Training. The bill specifies that a pistol training or safety program meets the requirements for knowledge or training in the safe use and handling of

a pistol only if the program is certified by the State or a national or State firearms training organization and provides instruction in: safe storage, use, and handling of a pistol; ammunition knowledge and the fundamentals of pistol shooting; pistol shooting positions; firearms and the law, including civil liability issues; avoiding criminal attack and controlling a violent confrontation; and all laws that apply to carrying a concealed pistol in this State. The program also must provide at least eight hours of instruction, including three hours of firing range time. In addition, the program must provide a certificate of completion stating that the program complies with the bill and that the individual successfully completed the course. Further, the course instructor must be certified by the State or a national organization.

The bill prohibits a person from granting a certificate of completion to an individual knowing that he or she did not satisfactorily complete the course, or presenting a certificate of completion to a concealed weapon licensing board knowing that the individual did not satisfactorily complete the course. A person who violates this provision is guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,500.

Under the bill, a person or entity that provides instruction or training to another person is immune from civil liability for damages to any person or property caused by the person who was trained, unless the person or entity providing the instruction or training was grossly negligent.

Fingerprints. The bill requires an individual, before submitting an application, to have two sets of classifiable fingerprints taken by the county sheriff. The sheriff may charge a fee of up to \$15 for the actual and reasonable costs of taking the fingerprints. The sheriff must take the fingerprints within five days after the individual requests his or her fingerprints to be taken. The fingerprints must be forwarded to the Department of State Police and the FBI for comparison with other fingerprints on file. Within 10 days after receiving a report from the FBI, the State Police must provide both comparisons to the county sheriff and the concealed weapon licensing board.

The board may not issue a license to an applicant until it has received the fingerprint comparison reports. The board is not required to issue a license to an applicant whose fingerprints are determined to be unclassifiable by the FBI.

(The bill's fingerprinting requirements are generally the same as those in current law, although the current Act does not provide for a fee or time limits.)

#### License Issuance or Denial

The bill requires a concealed weapon licensing board to deny a license to an applicant if he or she is not qualified. A license that is issued based upon an application that contained a material false statement is void.

The board must issue or deny a license within 30 days after receiving the fingerprint comparison report. If the board denies a license, it must inform the applicant within five business days in writing of the reasons for the denial. This information must include a statement of the specific and articulable facts supporting the denial, and copies of any writings, photographs, records, or other documentary evidence upon which the denial is based. The board also must inform the applicant in writing of his or her right to appeal the denial to the circuit court.

If the licensing board does not receive the fingerprint comparison report within 30 days after it is forwarded to the State Police by the FBI, the board must issue a temporary license if the applicant is otherwise qualified. The temporary license is valid for 180 days or until the board receives the comparison report and issues or denies a license. Upon issuance or denial, the applicant who received the temporary license must surrender it to the board. (Currently, a board may grant a temporary license, valid for up to 30 days, in case of emergency pending the results of the comparisons.)

The bill provides that a board may issue a temporary license to carry a concealed pistol to an applicant if it determines that there is probable cause to believe the safety of the applicant or a member of the applicant's family is endangered by the applicant's inability to obtain immediately a license to carry a concealed pistol. A temporary license must be on a form provided by the Department of State Police, unrestricted, and valid for up to 180 days. A temporary license may be renewed for one additional period of 180 days.

#### Appeal

Under the bill, if a concealed weapon licensing board denies or fails to issue a license, the applicant may appeal the denial or failure to issue to the circuit court in the circuit where the applicant resides. The appeal must be determined by a review of the record for error, except that if the decision of the board was based upon grounds of safety, that portion of the appeal must be by hearing de novo (i.e., a new hearing, rather than based on the record). A jury may not be provided in a hearing. A verbatim record of the hearing must be made.

If the court determines that the denial or failure to issue a license was clearly erroneous, the court must order the board to issue a license. If the court determines that the decision of the board to deny a

license to the applicant was arbitrary and capricious, the court must order the State to pay one-third and the county in which the board is located to pay two-thirds of the applicant's actual costs and attorney fees in appealing the denial. If the court determines that the applicant's appeal was frivolous, the court must order the applicant to pay the board's actual costs and attorney fees in responding to the appeal.

#### Concealed Weapon License; License Renewal

The bill requires that a license to carry a concealed pistol be in a form prescribed by the State Police. The license must contain the licensee's full name, date of birth, and street address; a photograph and a physical description of the licensee; and the effective dates of the license.

Except on premises where carrying a concealed pistol is prohibited and as otherwise provided by law, a license authorizes the licensee to carry a pistol concealed on or about his or her person anywhere in the State, and to carry a pistol, whether concealed or not, in a vehicle anywhere in the State. (Currently, a license must limit the carrying of a pistol to the reasons satisfactory to the licensing board, and a license is an authorization to carry a pistol only to the extent contained on the face of the license.)

A concealed pistol license is valid for three years and may be renewed in the same manner as the original license was received, except that the renewal fee is \$35, payable to the county, and must be deposited in the county general fund. (Currently, a license is valid for up to three years, and a renewal may not be granted except on the filing of a new application.)

In addition, for an individual who held a general nonrestricted license on July 1, 2001, and who was a peace officer or a former peace officer, the educational requirements are waived. For an individual licensed on or after July 1, 2001, the educational requirements are waived except that the applicant must present a statement certifying that he or she has completed at least three hours of training review since receiving a license, and that training included firing range time in the six months immediately preceding his or her renewal application. For any other individual licensed before July 1, 2001, applying for the first time to renew his or her license, the educational requirements are not waived.

An individual who is licensed to carry a concealed pistol on the bill's effective date may carry a concealed pistol under the license until its expiration or until the individual's authority is terminated, and may apply for a renewal license.

An individual licensed to carry a concealed pistol on July 1, 2001, is eligible for a renewal license at the fee provided in the bill. This provision applies

regardless of whether the license was restricted.

#### Notice of Criminal Charge

The bill requires a prosecuting attorney promptly to give the concealed weapon licensing board that issued a license notice of a criminal charge against the licensee for a felony or specified criminal offense. The prosecutor also must give the board prompt notice of the disposition of the criminal charge. If a license holder is convicted of a crime, the prosecuting attorney's notification must indicate if the crime involved brandishing or use of a pistol, if the license holder carried a pistol during the commission of the crime, or if the license holder carried no pistol during the commission of the crime. The State Police must provide a form for reporting purposes.

Each year, by a date determined by the State Police Director, the concealed weapon licensing board chairperson must compile and provide a report to the State Police containing the information provided to the licensing board pertaining to criminal charges, State civil infractions (concerning possession of a license and displaying a license to a peace officer), refusing to take a chemical test, or carrying a concealed pistol while under the influence of alcohol or a controlled substance.

#### Pistol-Prohibited Areas

The bill prohibits a licensed individual from carrying a concealed pistol on the premises of any of the following:

- A school or school property, except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping off or picking up the student from the school.
- A public or private day care center, child caring agency, or child placing agency.
- A sports arena or stadium.
- A dining room, lounge, or bar of a premises licensed under the Michigan Liquor Control Code. (This does not apply to an owner or employee of the premises.)
- Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding officials of the premises permit the carrying of a concealed pistol on that property.
- An entertainment facility that the individual knows or should know has a seating capacity of 2,500 or more individuals, or that has a sign above each public entrance stating a seating capacity of 2,500 or more.
- A hospital.
- A dormitory or classroom of a community college, college, or university.

(The bill defines “school” and “school property” with reference to definitions in the Michigan Penal Code’s weapon free school zone provisions. “School” means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. “School property” means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.)

The bill also prohibits a licensed individual from carrying a concealed weapon in violation of R 432.1212 or a successor rule of the Michigan Administrative Code promulgated pursuant to the Michigan Gaming Control and Revenue Act. (Rule 432.1212 prohibits an individual, with certain exceptions, from carrying a firearm or other weapon in a casino.)

n individual who violates these provisions is responsible for a civil violation and may be fined up to \$500, and the court must order the individual’s license to be suspended for six months. A second violation is a misdemeanor punishable by a fine of up to \$1,000, and the individual’s license must be revoked. A third or subsequent violation is a felony punishable by imprisonment for up to four years and/or a fine of up to \$5,000, and the individual’s license must be revoked.

The prohibitions apply to an individual who is licensed under the Act or who is a resident of another state and is licensed by that state.

#### License Suspension

The bill provides that a concealed weapon licensing board may revoke a license that it has issued to an applicant if the board determines that the individual committed any violation of the Act other than a State civil infraction (for failing to possess or display a license), or that the individual is not eligible to receive a license. If the concealed weapon licensing board determines that the individual has been found responsible for three or more State civil infraction violations of the Act during the license period, the board must conduct a hearing and may suspend the individual’s license for up to one year. (Currently, a board may revoke a license issued by it upon receiving a certificate from a magistrate that the licensee has been convicted of violating the Act or has been convicted of a felony. A board also may revoke a license when it determines that the reason for granting the license has ceased to exist, or determines for any reasonable cause that the licensee is unfit to carry a concealed pistol.)

Currently, a license may not be revoked except upon a written complaint and a hearing before the board, which must give the individual at least seven days’ notice. The bill retains these provisions but requires at least 10 days’ notice.

Under the bill, if a board is notified that a licensed individual is charged with a felony or misdemeanor, or if the board determines by clear and convincing evidence based on specific articulable facts that an applicant poses a danger to himself or herself or to any other person, the board immediately must suspend the license until there is a final disposition of the charge for that offense or pending a revocation hearing, as applicable, and send notice of that suspension to the individual. The notice must inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board must conduct a prompt hearing if requested in writing by the individual. The requirements for a complaint and advance notice do not apply in these cases.

If a licensing board orders a license suspended or revoked, or amends a suspension or revocation order, it immediately must notify a law enforcement agency having jurisdiction in the county in which the licensing board is located to enter the order or amended order into the LEIN. The law enforcement agency immediately must do so.

A suspension or revocation order or amended order is immediately effective. An individual is not criminally liable for violating the order or amended order, however, unless the individual has received notice of it.

If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under the bill, but has not previously received notice of it, the individual must be informed of the order or amended order and be given an opportunity to store the pistol properly or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of the Act. If a law enforcement agency or officer gives notice of a suspension or revocation order or amended order to an individual who has not previously received notice, the law enforcement agency or officer must enter a statement into the LEIN that the individual has received that notice.

#### Carrying Concealed Pistol

The bill requires a licensed individual to have the license in his or her possession at all times when carrying a concealed pistol. A licensed individual also must show his or her license to carry a concealed pistol and driver license or State personal identification card to a peace officer if requested. An individual who violates either of these provisions is responsible for a State civil infraction and may be fined up to \$100.

A licensed individual who is stopped by a peace officer must disclose that he or she is carrying a concealed pistol. An individual who fails to do so is responsible for a State civil infraction and may be fined up to \$500 and/or receive a six-month license suspension for a first offense. The individual may be fined up to \$1,000 and/or receive a license revocation for a second or subsequent offense.

If an individual is determined to be responsible for a civil infraction under these provisions, the court must notify the State Police and the concealed weapon licensing board that issued the license.

A pistol carried in violation of these requirements is subject to immediate seizure by a peace officer. If a peace officer seizes a pistol, the individual has 45 days in which to display his or her license or documentation to an authorized employee of the law enforcement entity employing the peace officer. The

pistol is subject to forfeiture if the individual does not display his or her license or documentation within the 45 days. This provision allowing seizure does not apply if the individual has his or her driver license or State personal identification card in his or her possession at the time of the violation, and the peace officer verifies through the LEIN that the individual is licensed to carry a concealed pistol.

A pistol carried in violation of the Act is subject to seizure and forfeiture as provided in the Revised Judicature Act. This provision does not apply if the violation is a State civil infraction involving possession or display of a license, unless the individual fails to present his or her license within the 45-day period.

#### Chemical Analysis

The bill provides that acceptance of a license constitutes implied consent to submit to a chemical analysis. The bill also specifies that these provisions apply to an individual who is exempt from having to obtain a license to carry a concealed pistol.

Under the bill, an individual may not carry a concealed pistol while he or she is under the influence of alcoholic liquor or a controlled substance or with a prohibited bodily alcohol content. A person who violates this provision is responsible for a State civil infraction or guilty of a crime as follows:

- A misdemeanor punishable by imprisonment for up to 93 days and/or \$100, and mandatory permanent license revocation, if the person was under the influence of alcoholic liquor and/or a controlled substance, or had a bodily alcohol content of 0.10 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- A misdemeanor punishable by imprisonment for up to 93 days and/or \$100, and possible license revocation for up to three years, if the person had an alcohol content of 0.08 gram or more but less than 0.10 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- A State civil infraction subject to a fine of up to \$100, and possible license revocation for one year, if the person had an alcohol content of 0.02 gram or more but less than 0.08 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

A peace officer who has probable cause to believe that an individual is carrying a concealed pistol in violation of these provisions may require the individual to submit to a chemical analysis of his or her breath, blood, or urine. The individual may refuse but the refusal may result in license revocation or suspension and the officer may obtain a court order requiring the individual to submit to



chemical analysis. If the individual submits to the chemical analysis, he or she may obtain an analysis from a person of his or her own choosing. The peace officer must inform the individual of these provisions before he or she is required to submit to a chemical analysis.

If a person refuses to take a chemical test, the peace officer promptly must report the refusal in writing to the concealed weapon licensing board that issued the license to the individual. If the person takes a chemical test and the test results indicate that he or she had any bodily alcohol content while carrying a concealed pistol, the peace officer promptly must report the violation in writing to the licensing board.

The collection and testing of breath, blood, and urine under these provisions must be conducted in the same manner that breath, blood, and urine specimens are collected and tested for alcohol- and controlled substance-related driving violations under the Michigan Vehicle Code.

The bill states that these provisions do not prohibit a licensed individual who has any bodily alcohol content from transporting a pistol in the locked trunk of his or her motor vehicle or another motor vehicle in which he or she is a passenger or, if the vehicle does not have a trunk, from transporting that pistol unloaded in a locked compartment or container that is separated from the ammunition for that pistol, or on a vessel if the pistol is transported unloaded in a locked compartment or container that is separated from the ammunition for that pistol.

#### Employer

The bill provides that the State or a local unit of government may not prohibit an individual from applying for or receiving a license to carry a concealed pistol, or carrying a concealed pistol in compliance with a license, as a condition for receiving or maintaining any other license or permit authorized by law.

An employer also may not prohibit an employee from applying for or receiving a license to carry a concealed pistol, or carrying a concealed pistol in compliance with a license. An employer, however, may prohibit an employee from carrying a concealed pistol in the course of employment with that employer.

A police agency may prohibit an employee from carrying a concealed pistol if doing so would result in increased insurance premiums or a loss or reduction of insurance coverage for that employer.

#### Concealed Weapon Enforcement Fund

The bill creates the Concealed Weapon Enforcement Fund in the State Treasury. The State Treasurer

may receive money or other assets from any source for deposit into the Fund, must direct the Fund's investment, and must credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

The bill requires the State Police to spend money from the Fund only to provide training to law enforcement personnel regarding the rights and responsibilities of individuals licensed to carry concealed pistols and proper enforcement techniques in light of those rights and responsibilities.

### Appropriation

The bill appropriates \$1 million from the General Fund to the Department of State Police for the fiscal year ending September 30, 2001, for all of the following:

- Distribution of trigger locks or other safety devices for firearms to the public free of charge.
- The provision of concealed pistol application kits to county sheriffs, local police agencies, and county clerks for distribution.
- Fingerprint analysis and comparison reports.
- Photographs on licenses.
- Recreation and maintenance of a database of individuals who apply for a license.
- The creation and maintenance of a database of firearms that have been reported lost or stolen. (Information in the database must be made available to law enforcement through the LEIN.)
- Grants to licensing boards for expenditure to implement the bill.
- Training to law enforcement personnel as described above.
- A public safety campaign regarding the bill's requirements.

### Database and Annual Report

The bill requires the Department of State Police to create and maintain a computerized database of individuals who apply for a license to carry a concealed pistol. The database must contain the applicant's name, date of birth, address, and county of residence; and the license number and expiration date, if the individual is licensed. (The State Police must enter this information into the LEIN.) The database also must contain, if the applicant was denied a license, the reasons for that denial; all pending criminal charges and criminal convictions obtained against the applicant during the license period; and all determinations of responsibility for pending civil infractions during the license period.

The bill specifies that information in the database is confidential, is not subject to the Freedom of Information Act, and may not be disclosed to any person except for purposes of the handgun licensure Act or for law enforcement purposes. If an individual who was denied a license after the bill's effective date is subsequently issued a license, the State Police must delete from the computerized database the previous reasons for denial.

In addition, the Department must file with the Secretary of the Senate and the Clerk of the House of Representatives an annual report setting forth the following information for each county concealed pistol licensing board: the number of concealed pistol applications received; the number of licenses issued; the number of licenses denied; categories for

denial; the number of licenses revoked; categories for revocation; the number of pending applications; the mean and median amount of time and the longest and shortest amount of time used by the FBI to supply the comparison report; the number of charges of State civil infractions of the Act or charges of criminal violations, categorized by offense, filed against licensees that resulted in a finding of responsibility or a criminal conviction (including the number of crimes in each category that involved brandishing, using, or carrying a pistol); the number of pending criminal charges against licensed individuals; the number of criminal cases dismissed; the number of cases filed against licensed individuals that resulted in a finding of not responsible or not guilty; the number of suicides by licensed individuals; and the actual costs incurred per permit for each county. The information in the annual report is subject to disclosure under the Freedom of Information Act.

### Firearm Law Compilation

The bill requires the Legislative Service Bureau to compile the State's firearms laws, including laws applicable to carrying a concealed pistol, and provide copies of the compilation to each licensing board for distribution. A board must give a copy of the compilation to each individual who applies for a license. The board must require the applicant to sign a written statement acknowledging receipt of the compilation. An individual is ineligible to receive a license until he or she has signed the statement.

### Concealed Pistol Application Kits

The bill requires local police agencies, county sheriffs, and county clerks to provide concealed pistol application kits (containing an application form, fingerprint cards, information about licensing procedures and appeal rights, and information identifying entities that provide firearm training) during normal business hours, free of charge, to individuals who wish to apply for licenses. A county sheriff, local police agency, or county clerk may not deny an individual the right to receive a concealed pistol application kit. An individual who is denied an application kit and obtains an order of mandamus directing the licensing board to provide a kit must be awarded actual and reasonable costs and attorney fees for obtaining the order.

The State Police must provide the application kits to county sheriffs, local law enforcement agencies, and county clerks in sufficient quantities to meet demand. The State Police may not charge a fee for the kits.

### Firearms Sale

The bill provides that if a licensed individual purchases a pistol, the seller must complete a sales

record in triplicate on a form provided by the State Police. The record must include the individual's concealed weapon license number, and be signed by the individual. The seller must retain a copy of the record, provide a copy to the individual, and forward the original form to the State Police within 10 days following the purchase.

An individual who makes a material false statement on a sales record is guilty of a felony punishable by up to four years' imprisonment and/or a fine up to \$2,500.

#### Firearms Recovery

Under the Act, all pistols, weapons, or devices carried or possessed contrary to the Act are declared forfeited to the State and must be turned over to the State Police. The bill provides that the Director of the State Police must dispose of the firearms by conducting a public auction, by destroying them, or by any other lawful manner prescribed by the Director.

Before disposing of a firearm, the Director must determine through the LEIN whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen, the Director must provide 30 days' written notice of his or her intent to dispose of the firearm to the owner, and allow the owner to claim the firearm within that 30-day period if the owner is authorized to possess that firearm.

The Director also must provide 30 days' notice to the public on the State Police website of intent to dispose of a firearm. The notice must include a description of the firearm and state the firearm's serial number, if it can be determined. The State Police must allow the owner to claim the firearm within that 30-day period if the owner is authorized to possess it. This 30-day period is in addition to the one required above.

The Department of State Police is immune from civil liability for disposing of a firearm in compliance with the bill.

#### Repealer

The bill repeals Section 3 of the Act, which allows a local government to charge a concealed weapon license application fee of up to \$5; Section 6, which establishes concealed weapon licensing boards; Section 9d, which provides that a firearm possessed in violation of the Act is subject to forfeiture; and Section 12c, which provides for the waiver of renewal fees for retired police officers.

MCL 28.421 et. al

Legislative Analyst: N. Nagata

## **FISCAL IMPACT**

### Department of State Police

Public Act 381 of 2000 is expected to have a fiscal impact on both State and local government. Additional operating costs can be expected to result from the provisions of this Act, particularly for the Department of State Police, though a significant percentage of those costs is likely to be recouped through fees and appropriations provided in the Act.

A major factor in the costs related to this legislation is the projected increase in applications and licensing for concealed weapon permits. Though predictions of how much new licensing activity will be forthcoming vary widely, for the purposes of this analysis, it is assumed that the number of current holders of concealed weapon permits, approximately 55,000, will grow to at least 125,000, with a similar rise in applications.

The Department of State Police will incur the direct primary fiscal impact of the Act, as it will be required to assume a number of responsibilities, including the production and distribution of application kits, the processing of fingerprints, the maintenance of certain databases, the training of local law enforcement in the administration of the Act, and the provision of a report to the Legislature.

The application kit required to be produced and distributed by the Department may result in significant costs. Should it be necessary to distribute 130,000 kits to 800 agencies throughout the State at a cost of \$4 per kit, the Department will incur a liability of \$520,000. The Department, lacking sufficient staff to accomplish this task, is likely to seek an outside vendor to assist with this requirement.

The Department also is required to see to the process of comparing an applicant's fingerprints against State and Federal criminal fingerprint databases. For each initial application and license renewal, the State will incur a cost of \$15 for a State database comparison and \$24 for a comparison with Federal records. In the first year of this Act, either many of the 55,000 current licensees will renew, or those who hold a restricted license will reapply for a license under the Act. Should there be another 100,000 in new applicants, resulting costs to the Department could reach nearly \$5.5 million for fingerprint comparison processing.

In addition, the bill might necessitate additional Department resources to accommodate increased activity associated with greater numbers of applicants required to be entered into a computer database. One additional fingerprint technician position in the firearms unit and one additional data

entry person in the criminal justice information center may be required for the additional record maintenance expected under the Act. These positions could cost a total of between \$75,000 and \$100,000 for the first year after the effective date of the Act. It is possible that in subsequent years the cost will be lower.

The Department also is required under the Act to provide for "training to law enforcement personnel regarding the rights and responsibilities of individuals who are licensed to carry concealed pistols in this state and proper enforcement techniques in light of those responsibilities".

In addition, the Department is required to prepare a comprehensive annual report to the Legislature, which will require the compilation of application and licensee data, some of which will be easily obtained through established State databases and some of which will require a greater level of labor to obtain, such as accounting for the number of civil infractions levied against licensees. The additional cost to the Department to prepare this report cannot be determined.

To assist in the funding for the above State responsibilities and for the increased local activity created by the Act, certain fees and an appropriation have been established by the Act. For new applicants for a concealed weapon permit, a \$60 fee must be paid. From this amount, \$10 will go to the county's general fund for an estimated \$1.0 million in the first year of the Act. The Act also provides for a local law enforcement agency to charge up to \$15 for taking an applicant's fingerprint. The remainder of the \$60 will go to the Concealed Weapon Enforcement Fund (\$5, equaling \$500,000 for State Police training of law enforcement) and \$45 will ultimately go to the Department (for a first-year estimated total of \$4.5 million). From the \$45, the Department will pay the costs of the State (\$15) and Federal (\$24) fingerprint comparisons. The \$6 remaining will be used by the Department to offset general administration of the Act. The Act also provides for a renewal fee for licensees (based on a three-year license) of \$35 (for a first-year projected total of \$1,400,000), which will all go to a county's general fund.

In addition, the Act provides an appropriation of \$1.0 million to the Department, to be used only for the following purposes: distributing trigger locks or other safety devices, application kits to locals, fingerprint analysis, application photographs, creating and maintaining a concealed weapon license database and a database of lost or stolen firearms, grants to counties for implementation of the Act, training, creating and distributing reporting forms, and conducting a public safety campaign regarding the Act. The cost of the responsibilities listed above not

previously noted in this analysis cannot be determined and the extent to which they will be done will depend upon available Department resources.

In summary, the Act creates a conservatively estimated \$6,120,000 in additional costs for the Department in the first year, supported by projected fee revenues and appropriations of a combined \$6,000,000. Whatever shortfall may exist between revenue received by the Department and its actual costs will be due in part to the difference in fee revenue received by the Department between the application fee for a new license and a renewal. In the case of a new application (\$60), \$45 goes to the Department, which will use it, in part, to cover fingerprint comparison costs of \$39. With a license renewal, the entire \$35 fee goes to the county general fund, leaving the Department with having to absorb the cost of fingerprint analysis. In the first year of the Act, as many as 40,000 current license holders could decide to "renew" and create \$1,560,000 in nonfee-supported fingerprint analysis costs.

years' imprisonment and/or a maximum fine of \$5,000.

Fiscal Analyst: B. Baker  
K. Firestone

#### Department of Corrections

There are no data available to indicated how many people will be convicted of the following acts prohibited in the Act:

- Making a false statement on a sales record.
- Intentionally making a material false statement on an application for a concealed weapons permit.
- Granting a certificate of completion to an individual who did not satisfactorily complete training or presenting such a certificate to a licensing board.

Conviction for these crimes will result a felony punishable by up to four years' incarceration and/or a maximum fine of \$2,500.

The Act criminalizes carrying a concealed weapon while being intoxicated or under the influence of a controlled substance. The sanction for conviction under this section varies with the bodily alcohol content, with a maximum sentence of 93 days and/or a fine of \$100 and revocation of the concealed weapons permit. There are no data to indicate how many individuals may be convicted of these crimes. Local units of government will incur the costs of incarceration and/or receive the fine revenues.

There are no data available to indicate how many people may be convicted of carrying a concealed weapon on premises such as a school, church, library, or sports arena. A first violation of this section will be a civil violation subject to a fine of up to \$500. A second violation will be a misdemeanor punishable by a fine of up to \$1,000. A subsequent conviction will be a felony punishable by up to four

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.