

HOUSE BILL No. 5039

July 19, 2007, Introduced by Reps. Rick Jones, Nofs, Polidori, Steil, Wojno, Meekhof, Calley, LeBlanc, Miller, Stahl, Hansen, Sheltroun, Alma Smith, Moss, Pearce, Bieda, Mayes, Casperson, Espinoza, LaJoy, Dean and Hammon 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 2, 9, and 14 (MCL 28.422, 28.429, and 28.434), section 2 as amended by 2004 PA 101, section 9 as amended by 2004 PA 100, and section 14 as amended by 2000 PA 381.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in ~~subsection (2)~~ **THIS ACT**, a
2 person shall not purchase, carry, or transport a pistol in this
3 state without first having obtained a license for the pistol as

1 prescribed in this section.

2 (2) A person who brings a pistol into this state who is on
3 leave from active duty with the armed forces of the United States
4 or who has been discharged from active duty with the armed forces
5 of the United States shall obtain a license for the pistol within
6 30 days after his or her arrival in this state.

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

21 (a) The person is not subject to an order or disposition for
22 which he or she has received notice and an opportunity for a
23 hearing, and which was entered into the law enforcement information
24 network pursuant to any of the following:

25 (i) Section 464a(1) of the mental health code, 1974 PA 258, MCL
26 330.1464a.

27 (ii) Section 5107 of the estates and protected individuals

1 code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA
2 642.

3 (iii) Section 2950(9) of the revised judicature act of 1961,
4 1961 PA 236, MCL 600.2950.

5 (iv) Section 2950a(7) of **THE REVISED JUDICATURE ACT OF 1961**,
6 1961 PA 236, MCL 600.2950a.

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

8 (vi) Section 6b(5) of chapter V of the code of criminal
9 procedure, 1927 PA 175, MCL 765.6b, if the order has a condition
10 imposed pursuant to section 6b(3) of chapter V of 1927 PA 175, MCL
11 765.6b.

12 (vii) Section 16b(1) of chapter IX of **CODE OF CRIMINAL**
13 **PROCEDURE**, 1927 PA 175, MCL 769.16b.

14 (b) The person is 18 years of age or older or, if the seller
15 is licensed pursuant to ~~section 923 of title 18 of the United~~
16 ~~States Code~~, 18 USC 923, is 21 years of age or older.

17 (c) The person is a citizen of the United States and is a
18 legal resident of this state.

19 (d) A felony charge against the person is not pending at the
20 time of application.

21 (e) The person is not prohibited from possessing, using,
22 transporting, selling, purchasing, carrying, shipping, receiving,
23 or distributing a firearm under section 224f of the Michigan penal
24 code, 1931 PA 328, MCL 750.224f.

25 (f) The person has not been adjudged insane in this state or
26 elsewhere unless he or she has been adjudged restored to sanity by
27 court order.

1 (g) The person is not under an order of involuntary commitment
2 in an inpatient or outpatient setting due to mental illness.

3 (h) The person has not been adjudged legally incapacitated in
4 this state or elsewhere. This subdivision does not apply to a
5 person who has had his or her legal capacity restored by order of
6 the court.

7 (i) The person correctly answers 70% or more of the questions
8 on a basic pistol safety review questionnaire approved by the basic
9 pistol safety review board and provided to the individual free of
10 charge by the licensing authority. If the person fails to correctly
11 answer 70% or more of the questions on the basic pistol safety
12 review questionnaire, the licensing authority shall inform the
13 person of the questions he or she answered incorrectly and allow
14 the person to attempt to complete another basic pistol safety
15 review questionnaire. The person shall not be allowed to attempt to
16 complete more than 2 basic pistol safety review questionnaires on
17 any single day. The licensing authority shall allow the person to
18 attempt to complete the questionnaire during normal business hours
19 on the day the person applies for his or her license.

20 (4) Applications for licenses under this section shall be
21 signed by the applicant under oath upon forms provided by the
22 director of the department of state police. Licenses to purchase,
23 carry, or transport pistols shall be executed in triplicate upon
24 forms provided by the director of the department of state police
25 and shall be signed by the licensing authority. Three copies of the
26 license shall be delivered to the applicant by the licensing
27 authority.

1 (5) Upon the sale of the pistol, the seller shall fill out the
2 license forms describing the pistol sold, together with the date of
3 sale, and sign his or her name in ink indicating that the pistol
4 was sold to the licensee. The licensee shall also sign his or her
5 name in ink indicating the purchase of the pistol from the seller.
6 The seller may retain a copy of the license as a record of the sale
7 of the pistol. The licensee shall return 2 copies of the license to
8 the licensing authority within 10 days following the purchase of
9 the pistol.

10 (6) One copy of the license shall be retained by the licensing
11 authority as an official record for a period of 6 years. The other
12 copy of the license shall be forwarded by the licensing authority
13 within 48 hours to the director of the department of state police.
14 A license is void unless used within 10 days after the date of its
15 issue.

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

26 (8) The licensing authority shall provide a basic pistol
27 safety brochure to each applicant for a license under this section

1 before the applicant answers the basic pistol safety review
2 questionnaire. A basic pistol safety brochure shall contain, but is
3 not limited to providing, information on all of the following
4 subjects:

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

6 (b) Safe storage of pistols.

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

8 (d) The responsibilities of owning a pistol.

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

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

16 (11) A person who forges any matter on an application for a
17 license under this section is guilty of a felony, punishable by
18 imprisonment for not more than 4 years or a fine of not more than
19 \$2,000.00, or both.

20 (12) A licensing authority shall implement this section during
21 all of the licensing authority's normal business hours and shall
22 set hours for implementation that allow an applicant to use the
23 license within the time period set forth in subsection (6).

24 Sec. 9. (1) A person within the state who owns or comes into
25 possession of a pistol shall ~~, if he or she resides in a city,~~
26 ~~township, or village having an organized police department,~~ present
27 the pistol for safety inspection to ~~the commissioner or chief of~~

1 ~~police of the city, township, or village police department or to a~~
2 ~~duly authorized deputy of the commissioner or chief of police. If~~
3 ~~that person resides in a part of the county not included within a~~
4 ~~city, township, or village having an organized police department,~~
5 ~~he or she shall present the pistol for safety inspection to the~~
6 ~~sheriff of the county or to a duly authorized deputy of the~~
7 ~~sheriff.~~ **1 OF THE FOLLOWING:**

8 **(A) IF HE OR SHE RESIDES IN A CITY, VILLAGE, OR TOWNSHIP THAT**
9 **HAS A POLICE DEPARTMENT, TO THAT POLICE DEPARTMENT.**

10 **(B) IF HE OR SHE RESIDES IN A CITY, VILLAGE, OR TOWNSHIP THAT**
11 **DOES NOT HAVE A POLICE DEPARTMENT, TO THE COUNTY SHERIFF'S**
12 **DEPARTMENT.**

13 **(2) If the person presenting the pistol is eligible to possess**
14 **a pistol under section 2(1) 2 OR IS EXEMPT FROM THE LICENSE**
15 **REQUIREMENTS OF THAT SECTION, a certificate of inspection shall be**
16 **issued in triplicate on a form provided by the director of the**
17 **department of state police. ~~containing~~ THE CERTIFICATE SHALL**
18 **CONTAIN** the name, age, address, description, and signature of the
19 person presenting the pistol for inspection, together with a full
20 description of the pistol. The original of the certificate shall be
21 delivered to the registrant. The duplicate of the certificate shall
22 be mailed within 48 hours to the director of the department of
23 state police and filed and indexed by the department and kept as a
24 permanent official record. The triplicate of the certificate shall
25 be retained and filed in the office of ~~the sheriff, commissioner,~~
26 ~~or chief of police~~ **THAT POLICE DEPARTMENT OR COUNTY SHERIFF'S**
27 **DEPARTMENT.**

1 (3) IF A PERSON PRESENTS A PISTOL FOR A SAFETY INSPECTION
2 UNDER SUBSECTION (1) AND THE POLICE DEPARTMENT OR COUNTY SHERIFF'S
3 DEPARTMENT DETERMINES THAT THE PERSON IS NOT LICENSED UNDER SECTION
4 2 AND IS NOT EXEMPT FROM THAT LICENSING REQUIREMENT, THE POLICE
5 DEPARTMENT OR COUNTY SHERIFF'S DEPARTMENT SHALL SEIZE THE PISTOL IF
6 THE DEPARTMENT HAS REASON TO BELIEVE THE PERSON IS NOT ELIGIBLE TO
7 POSSESS THE PISTOL, PENDING THE PERSON'S RECEIPT OF A LICENSE. THE
8 DEPARTMENT SHALL NOT SUBMIT THE PISTOL FOR DISPOSAL UNDER SECTION
9 14 UNTIL THE EXPIRATION OF 30 DAYS AFTER THE PISTOL IS SEIZED. IF
10 THE PISTOL IS SEIZED AND THE PERSON OBTAINS A LICENSE FOR THE
11 PISTOL DURING THE 30-DAY PERIOD, THE PERSON MAY HAVE THE PISTOL
12 INSPECTED UNDER THIS SECTION AS PROVIDED BY LAW. THIS 30-DAY PERIOD
13 DOES NOT PROHIBIT THE POLICE DEPARTMENT OR COUNTY SHERIFF'S
14 DEPARTMENT FROM IMMEDIATELY DISPOSING OF THE PISTOL IF THAT
15 DEPARTMENT DETERMINES THAT THE PISTOL IS OTHERWISE CARRIED OR
16 POSSESSED IN VIOLATION OF THIS ACT OR FROM IMMEDIATELY RETURNING
17 THE PISTOL TO A PERSON FROM WHOM IT WAS STOLEN. IF THE PERSON
18 PRESENTS A LICENSE FOR THE PISTOL WITHIN THE 30-DAY PERIOD, THE
19 POLICE DEPARTMENT OR SHERIFF'S DEPARTMENT SHALL PROMPTLY INSPECT
20 THE PISTOL AND RETURN IT TO THE PERSON AS PROVIDED BY LAW.

21 (4) IF A PERSON PRESENTS A PISTOL FOR A SAFETY INSPECTION
22 UNDER SUBSECTION (1) AND THE POLICE DEPARTMENT OR COUNTY SHERIFF'S
23 DEPARTMENT DETERMINES THAT THE PERSON IS NOT LICENSED UNDER SECTION
24 2 AND IS NOT EXEMPT FROM THAT LICENSING REQUIREMENT BUT THE
25 DEPARTMENT HAS NO REASON TO BELIEVE THE PERSON IS INELIGIBLE FOR
26 LICENSING UNDER THOSE SECTIONS, THE DEPARTMENT SHALL INSPECT THE
27 PISTOL AND RETURN IT TO THE PERSON WITH THE CERTIFICATE OF

1 INSPECTION AS PROVIDED IN SUBSECTION (2). THE CERTIFICATE SHALL
2 INDICATE THE DATE OF INSPECTION AND, IF THE PERSON IS NOT OTHERWISE
3 PROHIBITED FROM CARRYING OR POSSESSING A PISTOL, OPERATES AS A
4 LIMITED LICENSE TO POSSESS THE PISTOL FOR THE LESSER OF 30 DAYS
5 AFTER THE INSPECTION OR UNTIL THE APPLICATION FOR A LICENSE IS
6 DENIED. IF THE PERSON PROMPTLY APPLIED FOR A LICENSE AND THE
7 APPLICATION IS PENDING 30 DAYS AFTER THE INSPECTION, THE LIMITED
8 LICENSE OPERATES UNTIL THE LICENSING AUTHORITY TAKES ACTION ON THE
9 APPLICATION. THIS SUBSECTION DOES NOT AUTHORIZE THE PERSON TO
10 POSSESS THE PISTOL DURING THE 30-DAY PERIOD FOR ANY PURPOSE OTHER
11 THAN FOR STORING THE FIREARM PENDING ISSUANCE OF A LICENSE UNDER
12 SECTION 2 OR 5B.

13 (5) A PERSON MAY APPLY FOR A LICENSE REQUIRED UNDER SECTION 2
14 AT THE TIME OF PRESENTING A PISTOL FOR A SAFETY INSPECTION.

15 (6) A PERSON IS NOT SUBJECT TO ARREST OR PROSECUTION FOR A
16 VIOLATION OF SECTION 2 IF THE PERSON PRESENTS A PISTOL FOR
17 INSPECTION OR TRANSPORTS OR STORES A PISTOL AS PROVIDED IN THIS
18 SECTION.

19 (7) This section does not apply to a wholesale or retail
20 dealer in firearms who regularly engages in the business of selling
21 pistols at retail, or to a person who holds a collection of pistols
22 kept for the purpose of display as relics or curios and that are
23 not made for modern ammunition or are permanently deactivated.

24 (8) ~~(2)~~—A person who presents a pistol for a safety inspection
25 under subsection (1) shall ensure that the pistol is unloaded and
26 that the pistol is equipped with a trigger lock or other disabling
27 mechanism or encased when the pistol is presented for inspection. A

1 person who violates this subsection is responsible for a state
2 civil infraction and may be ordered to pay a civil fine of not more
3 than \$50.00.

4 Sec. 14. (1) Subject to ~~section~~**SECTIONS 5g AND 9**, all
5 pistols, weapons, or devices carried or possessed contrary to this
6 act are declared forfeited to the state, and shall be turned over
7 to the director of the department of state police or his or her
8 designated representative, for disposal under this section.

9 (2) The director of the department of state police shall
10 dispose of firearms under this section by 1 of the following
11 methods:

12 (a) By conducting a public auction in which firearms received
13 under this section may be purchased at a sale conducted in
14 compliance with section 4708 of the revised judicature act of 1961,
15 1961 PA 236, MCL 600.4708, by individuals authorized by law to
16 possess those firearms.

17 (b) By destroying them.

18 (c) By any other lawful manner prescribed by the director of
19 the department of state police.

20 (3) Before disposing of a firearm under this section, the
21 director of the department of state police shall do both of the
22 following:

23 (a) Determine through the law enforcement information network
24 whether the firearm has been reported lost or stolen. If the
25 firearm has been reported lost or stolen and the name and address
26 of the owner can be determined, the director of the department of
27 state police shall provide 30 days' written notice of his or her

1 intent to dispose of the firearm under this section to the owner,
2 and allow the owner to claim the firearm within that 30-day period
3 if he or she is authorized to possess the firearm.

4 (b) Provide 30 days' notice to the public on the department of
5 state police website of his or her intent to dispose of the firearm
6 under this section. The notice shall include a description of the
7 firearm and shall state the firearm's serial number, if the serial
8 number can be determined. The department of state police shall
9 allow the owner of the firearm to claim the firearm within that 30-
10 day period if he or she is authorized to possess the firearm. The
11 30-day period required under this subdivision is in addition to the
12 30-day period required under subdivision (a).

13 (4) The department of state police is immune from civil
14 liability for disposing of a firearm in compliance with this
15 section.

16 Enacting section 1. This amendatory act does not take effect
17 unless Senate Bill No. ____ or House Bill No. 5040 (request no.
18 03168'07) of the 94th Legislature is enacted into law.