

Senate Bill 460 (Substitute S-3 as reported)
Senate Bill 461 (as reported without amendment)
Sponsor: Senator Dave Jaye
Committee: Hunting, Fishing and Forestry

Date Completed: 5-24-99

RATIONALE

Under Michigan's handgun licensure Act, a person wishing to carry a concealed pistol must apply to his or her local concealed weapon licensing board. Concealed weapon licensing boards are established at the county level, which means that Michigan has 83 gun boards. Each board includes the prosecuting attorney, the sheriff, and a State Police officer. A license allows the licensee to carry a pistol concealed on his or her person or to carry a pistol, concealed or otherwise, in a vehicle operated or occupied by the licensee.

An applicant for a concealed weapon license must be at least 18 years old, a U.S. citizen, and a State resident for at least six months; must indicate a good reason to fear injury to his or her person or property, or have "other proper reasons"; and must be a "suitable person to be licensed". Further, an applicant must not have been convicted of or confined for a felony within the previous eight years or have a pending felony charge; must not have been adjudged insane or legally incapacitated, or be under an order of involuntary commitment; and must not be the subject of an order entered into the Law Enforcement Information Network (LEIN) under various sections of the law. In addition, an applicant is required to have two sets of fingerprints taken. A license may not be issued unless the concealed weapon licensing board receives a report from the State Police and the FBI that the applicant was not convicted of or confined for a felony within the previous eight-year period.

There is some concern that the current law which grants local licensing boards the exclusive authority for determining applicants' qualifications, does not provide a consistent and standardized approach to issuance of concealed weapon licenses. Reportedly, some gun boards grant licenses quite liberally, while others are very restrictive, and the law does not require a board to reveal its reasons for denying a license. In addition, some people believe that law-abiding and responsible citizens who meet certain criteria should not have to demonstrate a special

need to carry a concealed weapon.

CONTENT

Senate Bill 460 (S-3) would amend the handgun licensure Act to authorize the Department of State, instead of concealed weapon licensing boards, to issue licenses to carry a concealed pistol; establish license application requirements, including a requirement that an applicant be at least 21 years old; require the Department to issue a license if the requirements were met; set a \$55 application fee and a \$5 assessment fee; require the Department to issue or deny a license within 45 days after the application was submitted; allow the appeal of license denials to an administrative judge; require the destruction of applicants' fingerprints; require an applicant to demonstrate knowledge or training in the safe use and handling of a pistol; provide that a license would be valid for five years; allow a person to file an objection to a license issuance; create the "Concealed Weapon Enforcement Fund"; require local police departments, county sheriffs, county clerks, and the Department to provide concealed weapon application kits to individuals wishing to apply for a license; require the Department to create and maintain a computerized database of applicants, and report annually to the Legislature; impose penalties for violations pertaining to the carrying of concealed pistols; provide for licensing exemptions; and repeal provisions creating concealed weapon licensing boards and establishing licensing requirements and procedures. The bill would take effect January 1, 2000.

Senate Bill 461 would amend the Age of Majority Act, to provide that the Act would not supersede the age requirements prescribed in the handgun licensure Act and the Michigan Liquor Control Code. The bill is tie-barred to Senate Bill 460.

The following is a detailed description of Senate Bill 460 (S-3).

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 License Application

The bill would allow an individual to apply to the Department of State for a license to carry a concealed pistol. The application would have to be on a form provided by the Department and filed with the Department, during normal business hours. The Department would have to take a photograph of the applicant at the time the application was filed. The application would have to be signed under oath administered by an authorized employee of the Department.

The application would have to contain the applicant's name and address, and a statement of the following:

- The applicant was familiar with the Act's concealed pistol provisions.
- The applicant met all criteria for a license.
- Whether the applicant had ever been convicted of a crime involving domestic violence.
- Whether the applicant had been found guilty but mentally ill of any crime, or had offered a plea of not guilty, or had been acquitted of any crime, by reason of insanity.
- Whether the applicant had ever been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- The applicant was not under court order of legal incapacity in the State or elsewhere.

The application form would have to contain a conspicuous warning that the application was executed under oath and that intentionally making a material false statement on the application would be a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,000. The Department would have to retain a copy of each application as an official record.

(Under the current Act, if an applicant lives in a city,

village, or township with an organized police department, a license may not be issued without the approval of the supervisor, commissioner or chief of police, or marshal of that local unit. If an applicant does not live in a city, village or township with an organized police department, the application must be submitted to the township supervisor for approval or objection. In either case, if an application is not approved, the applicant may appeal to the concealed weapon licensing board in the county. The licensing board may issue a license after the local official approves the application, or after the board holds a hearing on an appeal.)

License Requirements and Qualifications

Fees. Each applicant would be required to pay a \$55 fee, or a fee equal to the actual and reasonable Department costs for processing the application, whichever was greater, plus an additional assessment of \$5 for deposit in the Concealed Weapon Enforcement Fund (as proposed in the bill) when the application was filed. A local unit, or a State agency or department could not charge an additional fee, assessment, or other amount in connection with a license, other than the fingerprint fee provided under the bill. The fee and assessment would have to be payable to the State of Michigan. The State Treasurer would have to deposit the fee in the General Fund to the credit of the Department and deposit the assessment in the Concealed Weapon Enforcement Fund. The Department would have to report to the Senate and House Fiscal Agencies by October 1 of each year its costs per applicant to implement the bill.

(Currently, under provisions the bill would delete, a local unit may charge up to \$5 for the expenses of issuing a license; a county clerk must collect a \$10 fee upon delivering a license (although a charter county may impose a different fee, up to the cost of its services); an applicant must pay a \$10 fee to appeal a local official's disapproval; and a concealed weapon licensing board may charge up to \$10 for restoration of firearm rights. Of the fee collected by a county clerk, \$2 must be remitted to the State Treasurer, and the balance paid into the county general fund.)

Criteria. The Department would be required promptly to issue a license to an applicant if he or she properly submitted an application and the Department determined that the applicant was 21 years of age or older and was not 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 and/or hospitalization).
- Section 444a of the Revised Probate Code (which refers to people who are legally

incapacitated).

- Section 2950 of the Revised Judicature Act (which pertains to domestic violence 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 a 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 Revised Probate Code defines "legally incapacitated person" as a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that he or she lacks sufficient understanding or capacity to make or communicate informed decisions concerning his or her person.)

In addition, the Department would have to determine that the applicant:

- Was not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under the Michigan Penal Code, or from carrying a firearm under Federal law.
- Had never been convicted of a felony and was not subject to a pending felony charge.
- Had not been found guilty but mentally ill of any crime and had not offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
- Had never been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- Was not under a court order of legal incapacity in Michigan or elsewhere.
- Demonstrated knowledge or training in the safe use and handling of a pistol (as described below).

("Convicted of" would mean 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. "Felony" would be defined as it is in Section 1 of the Code of Criminal Procedure, i.e., a violation of a penal law of this State punishable by imprisonment for more than one year or an offense expressly designated by law to be a felony.)

Safety Training. Before the Department issued a license, the applicant would be required to demonstrate knowledge or training in the safe use and handling of a pistol by successfully completing one of the following: a pistol safety training course or class presented by the National Rifle Association (NRA); a training course or class available to the public and presented by a law enforcement agency,

junior or community college, college, public or private institution or organization or firearms training school using instructors certified by the NRA or by this State; a law enforcement firearms safety training course or class offered for security guards, investigators, special deputies, or law enforcement officers; or a military pistol training course conducted by a branch of the U.S. Armed Forces.

The pistol training or safety program course would have to provide instruction in the safe use and handling of a pistol, the law of self-defense, and civil and criminal liability for inappropriate use of a pistol. In addition, the program would be required to include firing range time and provide a certificate of completion.

Under the bill, a person or entity that provided instruction or training to another person would be 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. This provision would be in addition to, and not instead of, immunity otherwise provided by law.

Fingerprints. Before submitting an application, an individual would be required to have two sets of fingerprints taken by the local police department; by the county sheriff, if the local unit did not have a police department; or by the Department of State Police. The State Police would have to notify the prosecuting attorney and the sheriff of the county where the individual resided and, if applicable, the police chief of the municipality where the individual resided, that he or she was fingerprinted by the State Police.

Within five days after the individual requested his or her fingerprints to be taken, the fingerprints would have to be taken and forwarded to the Department of State Police and the FBI for comparison with other fingerprints on file. The police department or sheriff would have to pay \$10 for each day over the five-day period in damages for failure to take the individual's fingerprints within that period. A police department or sheriff could charge a fee up to \$15 for the actual and reasonable costs of taking fingerprints. The State Police would be required to provide the comparison reports to the Department of State. The State Police also would have to determine by the LEIN whether the applicant was prohibited from being issued a license because any circumstance and would have to report that information to the Department. The State Police would have to destroy the fingerprints when it provided the comparison reports to the Department. (Currently, the Department of State Police must file the fingerprints.) If the FBI did not return the fingerprints within the 30-day period, the State Police would have to search any available record through the LEIN and inform the Department of the results.

If the Department did not receive a report within 30 days after the fingerprints were submitted and if the applicant were otherwise qualified, the Department would have to issue the license after receiving from the State Police the report of the search of records through the LEIN. If the FBI, however, reported a comparison of fingerprints after a license was issued and revealed a license disqualification, the State Police immediately would have to revoke the license and notify the individual. Upon application to the county sheriff or chief of police of the local unit and determination by the sheriff or police chief that an emergency existed and the individual should be issued a license, the Department would have to issue a license valid for 180 days. (Currently, in case of emergency, a concealed weapon licensing board may grant a temporary license for up to 30 days pending the fingerprint reports.)

Licensing Issuance or Denial

The Department could investigate an applicant for a license. The investigation would have to be restricted to determining only whether the resident was eligible to receive a license. A license that was issued based upon an application that contained a material false statement would be void.

Further, the Department would have to issue or deny a license within 15 days after receiving the fingerprint comparison report or within 45 days after the application was submitted to the Department, whichever occurred first. If the Department denied issuance of the license, it would immediately have to notify the applicant in writing of the reasons for the denial, and include a statement of facts supporting the denial as well as a copy of any record upon which the denial was based. The Department also would have to inform the applicant of his or her right to appeal the denial to an administrative law judge (ALJ), and to appeal the ALJ's decision to the district court.

Appeal

A person whose application for a license was denied could appeal the denial to an administrative law judge by filing a written notice of appeal with the Department within 90 days after receiving a written notice of denial. The appeal notice would have to include a copy of the denial notice and any record provided to the person by the Department supporting that denial. If the applicant did not receive or no longer had the denial notice or other record, he or she would have to state that information in the appeal notice and include a concise statement of his or her understanding of the reasons for denial. A denial would include a failure to issue a license within the required time. The ALJ could consider only the issues specified in the bill (i.e., the criteria for licensure).

Within 28 days after conducting a hearing for an appeal, the ALJ would have to order the Department to issue the license to the applicant within 30 days after the order was issued, or affirm the Department's decision denying the issuance of a license.

The bill also provides that a law enforcement agency or a prosecuting attorney could appeal the grant of a license to an administrative law judge by filing a written notice of appeal with the Department within 90 days after the license was granted. In addition, before an application was granted, any person could file an objection with an ALJ of the Department to prohibit the granting of a license, and the ALJ would have to prohibit issuance, based on clear and convincing evidence on the record of specific articulable facts demonstrating detriment to the safety of the applicant or another person due to the threat of physical violence if a license were issued or demonstrating abuse of one or more controlled substances by the applicant.

The ALJ would have to award costs and actual attorney fees to the applicant if he or she prevailed in an appeal.

A person or the Department aggrieved by the ALJ's decision could appeal the decision to the district court in the judicial district where the applicant resided by filing a written notice of appeal with the clerk of the court within 90 days after the decision was entered. The district court would have to apply the same standard of review as required of the ALJ. Within 28 days after an appeal, the court would have to order the Department to issue the license to the applicant within 30 days after the court issued its order; or affirm the Department's decision denying the issuance of a license. The court would have to award costs and actual attorney fees to the applicant if he or she prevailed in an appeal.

Concealed Weapon License

A license would have to be in a form prescribed by the Department. The license would have to contain the following information about the licensee: full name and street address, driver's license number or State personal identification card number, physical description, and photograph. It also would have to contain the effective dates of the license, and a statement that the license did not authorize the licensee to discharge or otherwise use the pistol in violation of any law and that improper discharge or use could result in criminal and civil liability.

A license would be valid throughout the State. The bill specifies that a license would be intended for use in other states that recognize a license by another state. Upon issuance, the Department would have to notify the sheriff and prosecuting attorney of the county where the person resided, and, if applicable, the police chief of the municipality where the person

resided.

Carrying Concealed Pistol

The bill would require a licensed individual to have the license in his or her possession at all times when carrying a concealed pistol. In addition, a licensed individual would be required to show the license to a peace officer if requested, and an individual who failed to do so would be responsible for a State civil infraction and could be fined up to \$100.

A licensed individual who was stopped by a peace officer would be required to disclose that he or she was carrying a concealed pistol upon his or her person or in his or her vehicle, and an individual who failed to do so would be responsible for a State civil infraction. A violator could be fined up to \$500 for a first offense; up to \$1,000 for a second offense; and up to \$1,000, and subject to suspension of the license for one year, for a third or subsequent offense.

If an individual stopped by a peace officer were not carrying his or her license the officer would have to determine through the LEIN whether the individual had a valid license. If the individual were licensed, the officer could not seize the concealed pistol.

License Renewal

An individual who was licensed to carry a concealed pistol on the bill's effective date could carry a concealed pistol under the license until its expiration or until the individual's authority to carry was otherwise terminated, whichever occurred first. The individual could apply for a renewal license when the license expired. He or she would not be required to complete a training course.

A concealed pistol license would be valid for five years and could be renewed in the same manner as the original license except the renewal fee would be \$20 (payable to the Department) and fingerprints would not be required. (Currently, a license must be issued for a definite period, which may not exceed three years. A renewal may not be granted except upon the filing of a new application.)

Revocation

Currently, a licensing board may revoke any license issued after receiving a certificate of any magistrate showing that the licensee has been convicted of a felony or of violating the Act. In addition, a license may be revoked whenever a board judges that the reason for granting the license has ceased to exist, or whenever the board determines for any reasonable cause that the licensee is an unfit person to carry a concealed pistol. The bill would delete these provisions.

The bill, instead, would allow the Department, after issuing a license, to revoke the license if the Department determined that the individual committed a felony or was not eligible under the Act to receive a concealed pistol license. A license could not be revoked except upon written complaint and an opportunity for a hearing before the Department, and the Department would have to give the individual at least 10 days' notice of a hearing. (Currently, a board must give at least seven days' notice of a hearing before the board.)

A prosecuting attorney or a law enforcement agency could file a petition to revoke a license in the district court for the judicial district where the licensee resided. If the prosecuting attorney or law enforcement agency showed by clear and convincing evidence on the record of specific articulable facts related to the individual specifically and demonstrating detriment to the safety of the applicant or another person due to the threat of physical violence if a license were issued or demonstrating abuse of one or more controlled substances by the applicant, the court would have to revoke the license. The court would have to grant or deny the petition within 28 days. The chief judge of the district court would have to reassign the case as necessary to ensure that it was decided within 28 days.

Licensing Exemptions

The current Act exempts the following entities and their members from concealed weapon licensing requirements: a police or correctional agency of the U.S., this State, or local unit of this State; the U.S. Army, Air Force, Navy, or Marine Corps; an organization authorized to purchase or receive weapons; and the National Guard, Armed Forces Reserves, or other duly authorized military organization. The bill also would exempt a member of one of these authorized organizations for a pistol used in the course of his or her duties with that entity.

Concealed Weapon Enforcement Fund

The Concealed Weapon Enforcement Fund would be created in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, would have to direct the Fund's investment, and would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund.

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

Database and Annual Report

The Department would have to create and maintain a computerized database of individuals who applied for a license. The database would contain the applicant's name, address, and county of residence; and, if the applicant were licensed to carry a concealed pistol, the license number and expiration date. This information also would be entered into the LEIN. If the applicant were denied a license, the database would have to include the reasons for that denial. If an individual who was denied a license were subsequently issued a license, the Department would have to delete the previous reasons for denial from the computerized database. Information in the database would be confidential and could not be disclosed to any person except for purposes of the Act or to a police agency through the LEIN to verify whether an individual was licensed to carry a concealed pistol or an authorized weapon.

In addition, the Department would be required to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives setting forth 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, and the number of pending applications.

Concealed Weapon Application Kits

Local police departments, county sheriffs, county clerks, and the Department would have to provide concealed weapon application kits (containing an application form, fingerprint cards, licensing and appeal procedures, and firearm training information), during normal business hours to individuals who wished to apply for licenses. A police department or county sheriff could not deny an individual the right to receive at least one concealed weapon application kit.

Employer

The State or a local unit of government (city, village, township, county, community college, college, or university) could not prohibit an employee from applying for and receiving a license to carry a concealed pistol, or carrying a concealed pistol in compliance with a license. The State or a local unit could not discipline or otherwise retaliate against an employee for providing information, including but not limited to oral testimony, regarding the propriety of issuing to an individual a license to carry a concealed pistol.

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

that employer.

Gas Ejecting Device

Currently, a licensing board may issue to any bank, trust company, armored car company, railway company, express company, or other company, institution, copartnership, or individual possessing a large sum of money or other valuables, a license to equip the premises or vehicles with gas ejecting devices to be used for protection from criminal assaults. The bill instead would allow the Department to issue such a license to any person or individual possessing a large sum of money or other valuables.

The Act currently requires the Department of State Police to promulgate rules to govern the issuance of these licenses, and allows concealed weapon licensing boards to issue a license authorizing the manufacture and/or sale of a gas ejecting or emitting weapon or device. Under the bill, the Department of State would have to promulgate the rules, and could issue a license to manufacture or sell a gas ejecting or emitting weapon or device. The bill specifies that rules promulgated by the Department of State Police under this provision before the bill's effective date would remain in effect until rescinded by the Department of State.

Firearm Transportation

The current Act exempts from concealed weapon licensing requirements a person while carrying a pistol unloaded in a wrapper or container in the trunk of his or her vehicle from the place of purchase or repair to his or her home or place of business; or while moving goods from one place of abode or business to another. The bill also would exempt a person carrying an unloaded pistol going to or from his or her home or place of business and a shooting range or other place intended or suitable for use in hunting or target shooting, or other property he or she owned in whole or in part.

In addition, if a person had obtained a license to purchase, carry, or transport a pistol and a certificate of inspection for that pistol, an immediate family member of the person (the person's spouse, child, parent, grandparent, aunt, uncle, sister, or brother by blood, marriage, or adoption) could carry or transport the pistol in the State for hunting or target practice with the person's permission if the immediate family member were otherwise qualified for a license.

Firearms

The bill provides that a law enforcement agency that recovered or received a lost, stolen, or surrendered firearm would have to notify the owner by mail within 30 days after the firearm was recovered or received, if the owner were determinable from the LEIN or

other records. The owner would have 180 days to pick up the firearm after receiving notice.

Currently, 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 Michigan State Police Commissioner. The bill would require the firearms to be turned over to the Director of the Department of Management and Budget, who would have to dispose of the firearms by conducting a public auction in which the firearms could be purchased by authorized individuals and/or by destroying those firearms that could not be lawfully possessed by individuals under Federal or State laws, that were mechanically defective, or that remained unpurchased after an auction.

Other Provisions

Currently, a firearm that is carried or possessed in violation of the Act is subject to forfeiture. The bill would allow forfeiture if a violation of the Act were a felony.

Under the bill, an individual licensed to carry a concealed pistol or an individual exempt from licensure could not carry, possess, transport, or use a firearm while he or she had an 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 person who violated this provision would be responsible for a State civil infraction and could be fined up to \$500 for a first offense; up to \$1,000 for a second offense; and, for a third or subsequent offense, up to \$1,000, and the person's license could be suspended for one year.

The bill provides that if a licensed individual purchased a pistol, the seller would have to complete a sales record in triplicate on a form provided by the State Police. The record would have to include the individual's concealed weapon license number, and be signed by the individual. The seller would have to 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.

Under the bill, as a condition to obtaining any license or permit, a State department or agency could not prohibit a person from applying for or receiving a license to carry a concealed pistol and/or carrying a concealed pistol in compliance with a license issued under the Act.

Repealer

The bill would repeal Section 3 of the Act, which allows a local government to charge a concealed weapon license application fee of up to \$5; Section 4, which allows concealed weapon licensing boards to restore an individual's firearm rights; Section 6, which establishes concealed weapon licensing boards; and Section 7, which provides that

concealed pistol licenses issued before the Act's enactment expired on December 31, 1927.

MCL 28.421 et. al (S.B. 460)
722.53 (S.B. 461)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By abolishing the 83 county gun boards, Senate Bill 460 (S-3) would enable the State to establish a uniform and standardized system for issuing permits. The existing permit-issuing standards vary dramatically from county to county. Reportedly, Macomb County issued 42% of the 7,507 licenses issued in Michigan in 1998, while it can be very difficult to obtain a license in Washtenaw County. The bill would eliminate subjectivity in the permit approval process and provide every applicant who met the criteria set forth in the bill and who wished to obtain a concealed pistol permit with a fair opportunity to do so. It would allow law-abiding citizens to receive a concealed pistol permit without having to indicate a good reason to fear injury or danger, or another proper reason. Apparently, some gun boards are restrictive in their policies and grant licenses only to certain citizens, such as elected officials or former law enforcement officers. According to the *Grand Rapids Press* (9-2-98), unlike other members of the public, some judges who have obtained permits to carry concealed weapons were not required to appear before the board to defend the need for a permit. The article reports that in Kent County, 98% of 227 unrestricted permits issued in the past five years went to people connected with the law, and in Ottawa County, nearly all 124 permits issued from 1993 to 1997 had law enforcement connections.

Response: Current permit denials are based on an applicant's failure to meet a criterion, and not based on unfair or arbitrary decision-making. According to a review of 14 counties conducted by the Michigan State Police in 1994, the permit approval rating was almost 90% with 9,757 permits approved out of 10,920 applications received. The *Lansing State Journal* (5-14-99) reports that as of March 31, 1999, there were 21,245 unrestricted concealed weapon permits in Michigan. The discretionary powers of local gun boards are essential for the reasonable application of varying community standards. Concealed pistol permits issued on the basis of need provide an important balance between the interests of those who are in danger and the interests of the public to minimize potential risk.

Supporting Argument

Article I, Section 6 of the Michigan Constitution states, "Every person has a right to keep and bear

arms for the defense of himself and the state.” Responsible and law-abiding citizens should not be denied their constitutional right to bear arms to provide for their own protection and security outside of their homes.

Response: The exercise of this right should remain subject to reasonable regulation and discretion of the permit-issuing gun boards for purposes of protecting the health, safety, and welfare of the public. Although the purpose of self-defense might appear to validate a more liberal gun law, homicides, suicides, and accidental deaths reportedly outnumber self-defense deaths 40:1 (*Detroit Free Press*, 5-24-98).

Supporting Argument

The bills would reduce crime because the increased likelihood that an intended victim could be carrying a gun would deter criminals from attempting a crime against that person. Many times, armed citizens can defend their lives or property from perpetrators by simply brandishing their handgun. According to crime trends reported in Florida, where laws similar to that proposed in the bill have been in place since 1987, the state’s homicide rate decreased 27% and its handgun homicide rate decreased 38% through 1994.

Response: Criminals who currently do not carry firearms could feel the need to be armed since their intended victims also would be more likely to be armed. Increased firepower by criminals could further endanger or harm innocent victims. In addition, armed citizens could increase dangerous vigilante incidents. More guns in general would mean more chances for killings. According to a MIRS report (5-13-99), Attorney General Granholm noted that the nation’s crime rate has been decreasing since 1993, the year the Brady Handgun Violence Prevention Act passed. During that period, the crime rate has fallen less in the states with liberal gun laws (2.1% drop in general crime, 3% drop in violent crime) than it has in the states with strict gun laws (4.4 % drop in general crime, 4.9% drop in violent crime).

Supporting Argument

The bill would make Michigan part of a growing nationwide movement to issue a concealed pistol permit to any applicant who fulfilled the specific criteria. Currently, 12 states, including Michigan, are considered to be “may issue” states, where permit issuance is discretionary; while 30 other states are considered to be “shall issue” states, where a permit must be issued if criteria are met. In addition, Vermont does not regulate the carrying of a handgun either openly or concealed, and no permit is required. Reportedly, a study by John Lott, of the University of Chicago, examined the record of 3.5 million concealed weapon permittees in the “shall issue” states and found that those laws actually helped to reduce crime. According to an opinion article in the *Detroit News*, after the laws had been in effect for five years, “...murders declined by at least 15

percent, rapes by 9 percent and robberies by 11 percent” (Felbeck, 5-20-99).

Opposing Argument

It is said that the proposed changes could legally arm up to 200,000 more State residents. More guns would lead to more violence--whether on the road or in bars, restaurants, places of employment, sporting arenas, shopping centers, or parking lots. Reportedly, 12,000 motorists last year were injured not from traffic accidents, but at the hands of other motorists acting out of road rage. By replacing an insult or a shove with a bullet, arming angry drivers, bar patrons, and shoppers could lead to deadly confrontations. It is especially important to regulate the carrying of *concealed* pistols because they are not readily apparent. Allowing more people to obtain permits could increase the risk of suicide, family violence, and domestic assault because a concealed weapon would more likely be present in situations involving social interactions, rather than anonymous attackers. Whenever emotions run high, the presence of a gun can turn an unfriendly encounter into a fatal one. According to an article in the *Detroit News* (4-21-99), 482 of Michigan’s homicides in 1997 were committed with a firearm. It also has been reported that, for every death from firearms, another two people get shot and have to be hospitalized, and another five people receive outpatient treatment for gunshot wounds (*Detroit Free Press*, 3-24-98).

Furthermore, the easy availability of handguns in coat pockets, purses, and glove boxes would result in more guns being lost or stolen and more children being injured. According to Attorney General Granholm, firearms already are the third leading cause of death for children between the ages of five and 15. Moreover, adults arming themselves against each other would not effectively teach themselves or their children to value or develop nonviolent problem-solving skills. Considering the efforts being made to reduce school violence and keep weapons out of schools, it would be a mistake to send a message to children that packing a pistol is commonplace and acceptable.

Response: Any increase in the number of people carrying concealed pistols is speculative and would not axiomatically create more danger. The bill actually would strengthen regulations in a number of ways. The bill would add a new requirement that all applicants demonstrate knowledge or training in the safe use and handling of a pistol, and would increase the minimum age for licensure from 18 to 21. The bill also would expand license revocation provisions, and would enable a prosecutor or law enforcement agency to appeal the issuance of a license. In addition, the bill would create new penalties for someone who used, carried, or possessed a firearm while he or she had an unlawful blood alcohol content, or who failed to disclose his or her license to a peace officer or to disclose that he or she was carrying a concealed pistol in a vehicle. Also, requiring licenses to be issued at the State level

actually could result in the denial of a license to some people who otherwise might receive one from a local gun board.

Senate Fiscal Agency Opposing Argument

The bill would not adequately prevent the issuance of a license to people with mental illness. Under the bill, a license would have to be denied if an applicant had even been involuntarily committed due to mental illness, were under a court order of legal incapacity, had been found guilty but mentally ill of any crime, or had been acquitted of any crime by reason of insanity. Many people with a long history of mental illness, however, have never been charged with a crime, involuntarily committed, or subject to a court order. A person could be a paranoid schizophrenic, have been voluntarily committed, and have been receiving psychiatric treatment for decades and still receive a license to carry. While the bill's criteria in this respect may not be less stringent than current law, the bill presents an opportunity to restrict the issuance of licenses to individuals whose mental illness might make them unsuitable candidates for licensure. For example, perhaps a license application should include a waiver allowing mental health providers to release background information on applicants.

Opposing Argument

Local gun boards are aware of local conditions and are in the best position to judge a person's needs and qualifications for a concealed pistol permit. In addition to being approved by a local board, an applicant must first receive approval from a city, village, or township police chief or commissioner, supervisor, or marshal. While the bill would screen out convicted felons, it would not screen out people who have volatile tempers or get into drunken rages--people with whom local officials might be familiar. By transferring licensure to the Department of State, the bill would remove that local input and control. Although the bill would permit any person to file an objection with the Department to prohibit the granting of a license, local officials and residents would have no easy way of knowing that a particular individual had applied for a license. If local gun boards are, in fact, making arbitrary and subjective decisions, perhaps Statewide standards could be established without taking away local decision-making.

Response: The bill would not eliminate local involvement. An applicant would have to be fingerprinted either by a local law enforcement agency or by the State Police; if the State Police did the fingerprinting, it would have to notify local officials. In addition, a law enforcement agency or prosecutor could appeal the issuance of a license, or petition for the revocation of a license.

Opposing Argument

In April of this year, voters in Missouri rejected a ballot referendum to permit the widespread carrying of concealed weapons by a 5% margin. In addition,

the *Miami Herald* (4-8-99) reported that in Florida last November, voters overwhelmingly approved a referendum for stricter gun restrictions in a constitutional amendment allowing local governments to regulate firearm sales. According to a GONGWER report, a recent survey of 600 registered Michigan voters conducted by EPIC/MRA showed little change in public attitudes toward expanding the issuance of concealed weapons permits, with 53% being opposed to changing the law and 70% believing that someone should not pack a concealed weapon without demonstrating the need for one.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 460 (S-3)

The bill would impose several new requirements on the Department of State. The Department would incur costs for the issuance of licenses. Further, the Department would incur administrative costs in the creation and maintenance of a database for applicants for licenses. The bill would set a \$55 fee to apply for a license. The applicant also would have to pay an additional \$5 for deposit into the Concealed Weapon Enforcement Fund. There are no data to indicate how many people may apply for a concealed weapon license. Therefore, the fiscal impact of the \$55 fee is indeterminate.

The bill would have a minimal fiscal impact on the Department of State Police and local law enforcement agencies. The Department would face fewer responsibilities under the bill than under current law.

Senate Bill 461

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: E. Limbs
B. Baker

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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.