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**SFA****BILL ANALYSIS**

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Senate Bills 460 and 461 (as introduced 3-23-99)  
Sponsor: Senator Dave Jaye  
Committee: Hunting, Fishing and Forestry

Date Completed: 4-9-99

## **CONTENT**

**Senate Bill 460** 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; set a \$50 application fee; require the Department to issue or deny a license within 15 days after receiving the applicant's fingerprint comparison report or within 45 days after the application was submitted; provide for district court review of license denials; 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; 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 data base of applicants, and report annually to the Legislature; 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.

### 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, and 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.

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 for a license to carry a concealed pistol 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

**Fee.** Each applicant would be required to pay a \$50 fee when the application was filed. The fee would have to be payable to the State of Michigan. (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 to an applicant a license to carry a concealed pistol if the applicant properly submitted an application and the Department determined that the applicant was 21 years of age or older and not any of the following:

- The subject of an order or disposition under various sections of the Mental Health Code, the Revised Probate Code, the Revised Judicature Act, or the Code of Criminal Procedure.
- Prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under the Michigan Penal Code.
- Acquitted of any crime on grounds of insanity.
- Under an order of involuntary commitment, or under a court order of legal incapacity.
- Ever convicted of a felony or subject to a pending felony charge.

("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.)

(Currently, an applicant must be at least 18 years old, a U.S. citizen, and a State resident for at least six months; must have 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.)

**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.

**Fingerprints.** Before submitting an application, an individual would be required to have two sets of fingerprints taken by the local police department or, if the local unit did not have a police department, by the county sheriff. A fee could be charged as provided in MCL 28.273 (which allows the Department of State Police to charge a fee of up to \$15 for taking and processing fingerprints).

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 State Police would be required to provide the comparison reports to the Department of State. 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 the applicant were otherwise qualified, the Department would have to issue the license after receiving from the State Police the report of the search records through the LEIN.

(Currently, the Act requires an applicant to have two sets of fingerprints taken. A license may not be

issued unless the licensing board receives reports from the State Police and the FBI that the applicant was not convicted or confined for a felony within the previous eight years. In case of emergency, the 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, including a statement of facts supporting the denial and a copy of any record upon which the denial was based, and inform the applicant of his or her right to petition the district court for review of the denial.

A person whose application for a license was denied could appeal the denial to the district court in the judicial district where the applicant resided. The court would have to award costs and actual attorney fees to the prevailing party in an appeal.

#### 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.

#### 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, physical description, and photograph. It also would have to contain a registration number unique to the license, 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 of the county where the person resided.

#### Data Base and Annual Report

The Department would have to create and maintain a computerized data base of individuals who applied for a license. The data base would contain the applicant's name, address, county of residence, concealed pistol license number and expiration date. This information also would be entered into the LEIN. If the applicant were denied a license, the data base 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 data base. Information in the data base 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.

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.

#### 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.

#### 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.

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.)

Currently, a licensing renewal fee is not required for an applicant who is a retired police officer of a duly authorized State or local police agency. When applying for a license renewal, a retired officer must submit evidence of retirement to have the fee waived. The bill would retain this provision.

#### 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 a license to an individual to carry a concealed pistol.

An employer could not prohibit an employee from applying for or receiving a license, or carrying a concealed pistol 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.

#### 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 any violation of the Act (other than not having the license in his or her possession while carrying a pistol or showing the license to a peace officer upon request), or if the Department determined that the individual 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.)

#### 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.

#### 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.

The bill provides that a law enforcement agency that recovered a stolen firearm would have to notify the owner, if known, within 90 days after the stolen firearm was recovered.

Under the bill, an owner of private real property could post a sign stating that the carrying of concealed pistols on that property was prohibited.

#### 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)

Legislative Analyst: N. Nagata

### **FISCAL IMPACT**

Senate Bill 460 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 data base for applicants for licenses. The bill would set a \$50 fee to apply for a license. There are no data to indicate how many people may apply for a concealed weapon license. Therefore, the fiscal impact of the \$50 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 would have no fiscal impact on State or local government.

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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.