

SENATE BILL No. 329

March 14, 2001, Introduced by Senator JAYE and referred to the Committee on Hunting, Fishing and Forestry.

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 section 5b (MCL 28.425b), as added by 2000 PA 381.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5b. (1) To obtain a license to carry a concealed
2 pistol, an individual shall apply to the concealed weapon licens-
3 ing board in the county in which that individual resides for a
4 license to carry a concealed pistol. The application shall be
5 filed with the county clerk as clerk of the concealed weapon

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1 licensing board during the county clerk's normal business hours.
2 The application shall be on a form provided by the director of
3 the department of state police and shall allow the applicant to
4 designate whether the applicant seeks a temporary license. The
5 application shall be signed under oath by the applicant. The
6 oath shall be administered by the county clerk or his or her
7 representative. The application shall contain all of the follow-
8 ing information:

9 (a) The applicant's legal name, date of birth, and the
10 address of his or her primary residence. If the applicant
11 resides in a city, village, or township that has a police depart-
12 ment, the information provided under this subdivision shall
13 include a statement that the city, village, or township has a
14 police department.

15 (b) A statement by the applicant that the applicant meets
16 the criteria for a license under this act to carry a concealed
17 pistol.

18 (c) A statement by the applicant providing authority to the
19 concealed weapon licensing board to access any record pertaining
20 to the qualifications of an applicant for a license to carry a
21 concealed pistol under this act.

22 (d) A statement by the applicant regarding whether he or she
23 has a history of mental illness that would disqualify him or her
24 under subsection (7)(j) to (l) from receiving a license to carry
25 a concealed pistol, and granting authority to the concealed
26 weapon licensing board to access the mental health records of the
27 applicant relating to his or her mental health history. The

1 applicant may request that information received by the concealed
2 weapon licensing board under this subdivision be reviewed in a
3 closed session. If the applicant requests that the session be
4 closed, the concealed weapon licensing board shall close the ses-
5 sion only for purposes of this subdivision. The applicant and
6 his or her representative have the right to be present in the
7 closed session. Information received by the concealed weapon
8 licensing board under this subdivision is confidential and shall
9 not be disclosed to any person except for purposes of this act.

10 (e) A statement by the applicant regarding whether he or she
11 has ever been convicted in this state or elsewhere for any felony
12 or misdemeanor.

13 (f) A statement by the applicant whether he or she is dis-
14 honorably discharged from the United States armed forces.

15 (g) If the applicant seeks a temporary license, the facts
16 supporting the issuance of that temporary license.

17 (h) A statement setting forth the names, residential
18 addresses, and telephone numbers of 2 individuals who are refer-
19 ences for the applicant.

20 (i) A passport-quality photograph of the applicant provided
21 by the applicant.

22 (2) The application form shall contain a conspicuous warning
23 that the application is executed under oath and that intention-
24 ally making a material false statement on the application is a
25 felony punishable by imprisonment for not more than 4 years or a
26 fine of not more than \$2,500.00, or both.

1 (3) An individual who intentionally makes a material false
2 statement on an application under subsection (1) is guilty of a
3 felony punishable by imprisonment for not more than 4 years or a
4 fine of not more than \$2,500.00, or both.

5 (4) The concealed weapon licensing board shall retain a copy
6 of each application for a license to carry a concealed pistol as
7 an official record.

8 (5) Each applicant shall pay a fee of \$55.00 by any method
9 of payment accepted by that county for payments of other fees and
10 penalties, plus an additional assessment of \$5.00 for deposit in
11 the concealed weapon enforcement fund under section 5v at the
12 time of filing an application under this section. A unit of
13 local government, an agency of a unit of local government, or an
14 agency or department of this state shall not charge an additional
15 fee, assessment, or other amount in connection with a license
16 under this section, other than the fingerprint fee provided for
17 in this act. The fee and assessment shall be payable to the
18 county. The county treasurer shall deposit \$10.00 of each fee
19 collected under this section in the general fund of the county to
20 the credit of the county clerk and forward the balance to the
21 state treasurer. The state treasurer shall deposit the balance
22 of the fee in the general fund to the credit of the department of
23 state police. The state treasurer shall deposit the assessment
24 in the concealed weapon enforcement fund created in section 5v.
25 Each county shall report to the senate and house fiscal agencies
26 by October 1 of each year its costs per applicant to implement
27 this section.

1 (6) The county sheriff on behalf of the concealed weapon
2 licensing board shall verify the requirements of subsection
3 (7)(d), (e), (f), (h), (i), (j), (k), (l), and (m) through the
4 law enforcement information network and report his or her finding
5 to the concealed weapon licensing board. If the applicant
6 resides in a city, village, or township that has a police depart-
7 ment, the concealed weapon licensing board shall contact that
8 city, village, or township police department to determine only
9 whether that city, village, or township police department has any
10 information relevant to the investigation of whether the appli-
11 cant is eligible under this act to receive a license to carry a
12 concealed pistol.

13 (7) The concealed weapon licensing board shall issue a
14 license to an applicant to carry a concealed pistol within the
15 period required under this act after the applicant properly sub-
16 mits an application under subsection (1) and the concealed weapon
17 licensing board determines that all of the following circum-
18 stances exist:

19 (a) The applicant is 21 years of age or older, ~~—~~ OR AT
20 LEAST 18 YEARS OF AGE IF THE APPLICANT IS 1 OR MORE OF THE
21 FOLLOWING:

22 (i) A PERSON REQUIRED TO CARRY A CONCEALED PISTOL BY HIS OR
23 HER EMPLOYER.

24 (ii) A SELF-EMPLOYED PERSON WHO CARRIES A CONCEALED PISTOL
25 BECAUSE OF HIS OR HER EMPLOYMENT.

26 (iii) A MOTHER.

1 (iv) A PHYSICALLY DISABLED PERSON.

2 (b) The applicant is a citizen of the United States or is a
3 resident legal alien as defined in section 11 of title 18 of the
4 United States Code, is a resident of this state, and has resided
5 in this state for at least 6 months. The concealed weapon
6 licensing board may waive the 6-month residency requirement for a
7 temporary license under section 5a(8) if the concealed weapon
8 licensing board determines there is probable cause to believe the
9 safety of the applicant or the safety of a member of the
10 applicant's family is endangered by the applicant's inability to
11 immediately obtain a license to carry a concealed pistol.

12 (c) The applicant has knowledge and has had training in the
13 safe use and handling of a pistol by the successful completion of
14 a pistol safety training course or class that meets the require-
15 ments of section 5j, and that is available to the general public
16 and presented by a law enforcement agency, junior or community
17 college, college, or public or private institution or organiza-
18 tion or firearms training school.

19 (d) The applicant is not the subject of an order or disposi-
20 tion under any of the following:

21 (i) Section 464a of the mental health code, 1974 PA 258,
22 MCL 330.1464a.

23 (ii) Former section 444a of the revised probate code, 1978
24 PA 642, MCL 700.444a, or section 5107 of the estates and pro-
25 tected individuals code, 1998 PA 386, MCL 700.5107.

26 (iii) Sections 2950 and 2950a of the revised judicature act
27 of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

1 (iv) Section 6b of chapter V of the code of criminal
2 procedure, 1927 PA 175, MCL 765.6b, if the order has a condition
3 imposed pursuant to section 6b(3) of chapter V of the code of
4 criminal procedure, 1927 PA 175, MCL 765.6b.

5 (v) Section 16b of chapter IX of the code of criminal proce-
6 dure, 1927 PA 175, MCL 769.16b.

7 (e) The applicant is not prohibited from possessing, using,
8 transporting, selling, purchasing, carrying, shipping, receiving,
9 or distributing a firearm under section 224f of the Michigan
10 penal code, 1931 PA 328, MCL 750.224f.

11 (f) The applicant has never been convicted of a felony in
12 this state or elsewhere, and a felony charge against the appli-
13 cant is not pending in this state or elsewhere at the time he or
14 she applies for a license described in this section.

15 (g) The applicant is not dishonorably discharged from the
16 United States armed forces.

17 (h) The applicant has not been convicted of a misdemeanor
18 violation of any of the following in the 8 years immediately pre-
19 ceding the date of application:

20 (i) Section 625(1) of the Michigan vehicle code, 1949
21 PA 300, MCL 257.625, punishable as provided in subsection (8)(b)
22 of that section (drunk driving, second offense).

23 (ii) Section 626 of the Michigan vehicle code, 1949 PA 300,
24 MCL 257.626 (reckless driving).

25 (iii) Section 904(1) of the Michigan vehicle code, 1949 PA
26 300, MCL 257.904 (driving while license suspended or revoked),
27 punishable as a second or subsequent offense.

1 (iv) Section 29 of 1964 PA 283, MCL 290.629 (hindering or
2 obstructing weights and measures enforcement officer).

3 (v) Section 10 of the motor fuels quality act, 1984 PA 44,
4 MCL 290.650 (hindering, obstructing, assaulting, or committing
5 bodily injury upon director or authorized representative).

6 (vi) Section 7403 of the public health code, 1978 PA 368,
7 MCL 333.7403.

8 (vii) Section 7 of 1978 PA 33, MCL 722.677 (displaying sexu-
9 ally explicit materials to minors).

10 (viii) Section 81 of the Michigan penal code, 1931 PA 328,
11 MCL 750.81 (assault or domestic assault).

12 (ix) Section 81a(1) or (2) of the Michigan penal code, 1931
13 PA 328, MCL 750.81a (aggravated assault or aggravated domestic
14 assault).

15 (x) Section 136b(5) of the Michigan penal code, 1931 PA 328,
16 MCL 750.136b (fourth degree child abuse).

17 (xi) Section 145a of the Michigan penal code, 1931 PA 328,
18 MCL 750.145a (accosting, enticing, or soliciting a child for
19 immoral purposes).

20 (xii) Section 145n of the Michigan penal code, 1931 PA 328,
21 MCL 750.145n (vulnerable adult abuse).

22 (xiii) Section 157b(3)(b) of the Michigan penal code, 1931
23 PA 328, MCL 750.157b (solicitation to commit a felony).

24 (xiv) Section 215 of the Michigan penal code, 1931 PA 328,
25 MCL 750.215 (impersonating sheriff, conservation officer, coro-
26 ner, constable, or police officer).

1 (xv) Section 223 of the Michigan penal code, 1931 PA 328,
2 MCL 750.223 (illegal sale of a firearm or ammunition).

3 (xvi) Section 224d of the Michigan penal code, 1931 PA 328,
4 MCL 750.224d (illegal sale of a self-defense spray).

5 (xvii) Section 226a of the Michigan penal code, 1931 PA 328,
6 MCL 750.226a (sale or possession of a switchblade).

7 (xviii) Section 227c of the Michigan penal code, 1931 PA
8 328, MCL 750.227c (improper transportation of a firearm).

9 (xix) Section 228 of the Michigan penal code, 1931 PA 328,
10 MCL 750.228 (failure to have a pistol inspected).

11 (xx) Section 229 of the Michigan penal code, 1931 PA 328,
12 MCL 750.229 (accepting a pistol in pawn).

13 (xxi) Section 232 of the Michigan penal code, 1931 PA 328,
14 MCL 750.232 (failure to register the purchase of a firearm or a
15 firearm component).

16 (xxii) Section 232a of the Michigan penal code, 1931 PA 328,
17 MCL 750.232a (improperly obtaining a pistol, making a false
18 statement on an application to purchase a pistol, or using false
19 identification to purchase a pistol).

20 (xxiii) Section 233 of the Michigan penal code, 1931 PA 328,
21 MCL 750.233 (intentionally aiming a firearm without malice).

22 (xxiv) Section 234 of the Michigan penal code, 1931 PA 328,
23 MCL 750.234 (intentionally discharging a firearm aimed without
24 malice).

25 (xxv) Section 234d of the Michigan penal code, 1931 PA 328,
26 MCL 750.234d (possessing a firearm on prohibited premises).

1 (xxvi) Section 234e of the Michigan penal code, 1931 PA 328,
2 MCL 750.234e (brandishing a firearm in public).

3 (xxvii) Section 234f of the Michigan penal code, 1931 PA
4 328, MCL 750.234f (possession of a firearm by an individual less
5 than 18 years of age).

6 (xxviii) Section 235 of the Michigan penal code, 1931 PA
7 328, MCL 750.235 (intentionally discharging a firearm aimed with-
8 out malice causing injury).

9 (xxix) Section 235a of the Michigan penal code, 1931 PA 328,
10 MCL 750.235a (parent of a minor who possessed a firearm in a
11 weapon free school zone).

12 (xxx) Section 236 of the Michigan penal code, 1931 PA 328,
13 MCL 750.236 (setting a spring gun or other device).

14 (xxxi) Section 237 of the Michigan penal code, 1931 PA 328,
15 MCL 750.237 (possessing a firearm while under the influence of
16 intoxicating liquor or a drug).

17 (xxxii) Section 237a of the Michigan penal code, 1931 PA
18 328, MCL 750.237a (weapon free school zone violation).

19 (xxxiii) Section 411h of the Michigan penal code, 1931 PA
20 328, MCL 750.411h (stalking).

21 (xxxiv) Section 1 of 1952 PA 45, MCL 752.861 (reckless,
22 careless, or negligent use of a firearm resulting in injury or
23 death).

24 (xxxv) Section 2 of 1952 PA 45, MCL 752.862 (careless, reck-
25 less, or negligent use of a firearm resulting in property
26 damage).

1 (*xxxvi*) Section 3a of 1952 PA 45, MCL 752.863a (reckless
2 discharge of a firearm).

3 (*xxxvii*) A violation of a law of the United States, another
4 state, or a local unit of government of this state or another
5 state substantially corresponding to a violation described in
6 subparagraphs (*i*) to (*xxxvi*).

7 (*i*) The applicant has not been convicted of any other misde-
8 meanor in this state or elsewhere, in the 3 years immediately
9 preceding the date of application.

10 (*j*) The applicant has not been found guilty but mentally ill
11 of any crime and has not offered a plea of not guilty of, or been
12 acquitted of, any crime by reason of insanity.

13 (*k*) The applicant has never been subject to an order of
14 involuntary commitment in an inpatient or outpatient setting due
15 to mental illness.

16 (*l*) The applicant does not have a diagnosed mental illness
17 at the time the application is made regardless of whether he or
18 she is receiving treatment for that illness.

19 (*m*) The applicant is not under a court order of legal inca-
20 pacity in this state or elsewhere.

21 (*n*) The applicant has knowledge and has had training in the
22 safe use and handling of a pistol by the successful completion of
23 a pistol safety training course or class that meets the require-
24 ments of section 5j, and that is available to the general public
25 and presented by a law enforcement agency, junior or community
26 college, college, or public or private institution or
27 organization or firearms training school.

1 (o) Issuing a license to the applicant to carry a concealed
2 pistol in this state is not detrimental to the safety of the
3 applicant or to any other individual. A determination under this
4 subdivision shall be based on clear and convincing evidence of
5 civil infractions, crimes, personal protection orders or injunc-
6 tions, or police reports or other clear and convincing evidence
7 of the actions of, or statements of, the applicant that bear
8 directly on the applicant's ability to carry a concealed pistol.

9 (8) Upon entry of a court order or conviction of 1 of the
10 enumerated prohibitions for using, transporting, selling, pur-
11 chasing, carrying, shipping, receiving, or distributing a firearm
12 in this section, the department of state police shall immediately
13 enter the order or conviction into the law enforcement informa-
14 tion network. For purposes of this act, information of the court
15 order or conviction shall not be removed from the law enforcement
16 information network, but may be moved to a separate file intended
17 for the use of the county concealed weapon licensing boards, the
18 courts, and other government entities as necessary and exclu-
19 sively to determine eligibility to be licensed under this act.

20 (9) Before submitting an application under this section, the
21 individual shall have 2 sets of classifiable fingerprints taken
22 by the county sheriff. A sheriff may charge a fee for the actual
23 and reasonable costs of taking the fingerprints, but not more
24 than \$15.00.

25 (10) The county sheriff shall take the fingerprints of an
26 individual within the expiration of 5 business days after the

1 individual requests his or her fingerprints to be taken under
2 subsection (9).

3 (11) One set of fingerprints taken under subsection (9)
4 shall be taken on a form furnished by the department of state
5 police and provided to the applicant under section 5. That set
6 of fingerprints shall be forwarded immediately by the county
7 sheriff to the department of state police. The department of
8 state police shall compare that set of fingerprints with finger-
9 prints already on file with the department of state police. The
10 other set of fingerprints taken under subsection (9) shall be
11 taken on a form furnished by the federal bureau of investigation
12 and provided to the applicant under section 5. That set of fin-
13 gerprints shall be forwarded immediately by the county sheriff to
14 the department of state police who shall forward that set of fin-
15 gerprints to the federal bureau of investigation or an entity
16 designated by the federal bureau of investigation to receive
17 those fingerprints. The request shall state that the department
18 of state police is to be provided with the report of the
19 comparison. The department of state police shall within 10 days
20 after receiving the report provide a copy of both comparisons to
21 the county sheriff who took the fingerprints and to the concealed
22 weapon licensing board of the county in which the applicant
23 resides. The concealed weapon licensing board shall not issue a
24 concealed weapon license under this section to an applicant until
25 the concealed weapon licensing board has received the fingerprint
26 comparison reports required under this subsection. The concealed
27 weapon licensing board is not required to issue a concealed

1 weapons license to an applicant if that applicant's fingerprints
2 are determined to be unclassifiable by the federal bureau of
3 investigation.

4 (12) The concealed weapon licensing board shall deny a
5 license to an applicant to carry a concealed pistol if the appli-
6 cant is not qualified under subsection (7) to receive that
7 license.

8 (13) A license to carry a concealed pistol that is issued
9 based upon an application that contains a material false state-
10 ment is void from the date the license is issued.

11 (14) Subject to subsections (11) and (15), the concealed
12 weapon licensing board shall issue or deny issuance of a license
13 within 30 days after the concealed weapon licensing board
14 receives the fingerprint comparison report provided under subsec-
15 tion (11). If the concealed weapon licensing board denies issu-
16 ance of a license to carry a concealed pistol, the concealed
17 weapon licensing board shall within 5 business days do both of
18 the following:

19 (a) Inform the applicant in writing of the reasons for the
20 denial. Information under this subdivision shall include all of
21 the following:

22 (i) A statement of the specific and articulable facts sup-
23 porting the denial.

24 (ii) Copies of any writings, photographs, records, or other
25 documentary evidence upon which the denial is based.

1 (b) Inform the applicant in writing of his or her right to
2 appeal the denial to the circuit court as provided in section
3 5d.

4 (15) If the fingerprint comparison report is not received by
5 the concealed weapon licensing board within 30 days after the
6 fingerprint report is forwarded to the department of state police
7 by the federal bureau of investigation, the concealed weapon
8 licensing board shall issue a temporary license to carry a con-
9 cealed pistol to the applicant if the applicant is otherwise
10 qualified for a license. A temporary license issued under this
11 section is valid for 180 days or until the concealed weapon
12 licensing board receives the fingerprint comparison report pro-
13 vided under subsection (11) and issues or denies issuance of a
14 license to carry a concealed pistol as otherwise provided under
15 this act. Upon issuance or the denial of issuance of the license
16 to carry a concealed pistol to an applicant who received a tempo-
17 rary license under this section, the applicant shall immediately
18 surrender the temporary license to the concealed weapon licensing
19 board that issued that temporary license.

20 (16) As used in this section:

21 (a) "Convicted" means a final conviction, the payment of a
22 fine, a plea of guilty or nolo contendere if accepted by the
23 court, or a finding of guilt for a criminal law violation or a
24 juvenile adjudication or disposition by the juvenile division of
25 probate court or family division of circuit court for a violation
26 that if committed by an adult would be a crime.

1 (b) "Felony" means that term as defined in section 1 of
2 chapter I of the code of criminal procedure, 1927 PA 175,
3 MCL 761.1, or a violation of a law of the United States or
4 another state that is designated as a felony or that is punish-
5 able by death or by imprisonment for more than 1 year.

6 (c) "Mental illness" means a substantial disorder of thought
7 or mood that significantly impairs judgment, behavior, capacity
8 to recognize reality, or ability to cope with the ordinary
9 demands of life, and includes, but is not limited to, clinical
10 depression.

11 (d) "Misdemeanor" means a violation of a penal law of this
12 state or violation of a local ordinance substantially correspond-
13 ing to a violation of a penal law of this state that is not a
14 felony or a violation of an order, rule, or regulation of a state
15 agency that is punishable by imprisonment or a fine that is not a
16 civil fine, or both.

17 (e) "Treatment" means care or any therapeutic service,
18 including, but not limited to, the administration of a drug, and
19 any other service for the treatment of a mental illness.