

CONCEALED WEAPON PERMIT REQUIREMENTS

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House Bill 4978 as enrolled

Public Act 242 of 2005

Sponsor: Rep. Dave Hildenbrand

House Committee: Conservation, Forestry, and Outdoor Recreation

Senate Committee: Judiciary

Second Analysis (8-17-06)

BRIEF SUMMARY: The bill would require that those seeking a concealed pistol permit meet certain federal eligibility standards.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact.

THE APPARENT PROBLEM:

A May 20, 2005 letter addressed to the Department of State Police from the U. S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives said that Michigan's law to purchase a pistol and carry a concealed weapon was not aligned with federal requirements.

Federal law restricts all of the following people from obtaining and transporting firearms: convicted felons, people under indictment for felonies, mental defectives or incompetents, illegal users of controlled drugs, illegal aliens, veterans dishonorably discharged, those who have renounced their U. S. citizenship, fugitives from justice, people convicted of a misdemeanor crime of domestic violence, and those subject to domestic violence restraining orders. In addition, illegal aliens—those entering the country unlawfully—and also nonimmigrant aliens—for example, temporary workers and trainees, students, and visitors for business or pleasure—cannot obtain or transport arms.

To ensure that those who apply to purchase or carry arms are eligible to do so, officials customarily check state and federal databases, including the National Instant Criminal Background Check System (known as NICS), and the Immigration and Customs Enforcement databases (known as ICE). Since May 2002, local law enforcement agencies issuing firearms permits have been notified by the Michigan State Police that they are responsible for conducting ICE checks for non-U.S. citizens as part of a NICS check performed on a license applicant. However, the Department of State Police has recently been informed that a written policy does not satisfy federal requirements, since it does not have the same effect as a state law or regulation.

To align the state statute with the federal law, legislation has been introduced to require that an agency issuing a pistol permit 1) determine that an applicant is not prohibited by

federal law from owning or transporting a firearm, and 2) if the applicant is not a citizen of the United States, that he or she is not an illegal alien, or a nonimmigrant alien.

THE CONTENT OF THE BILL:

House Bill 4978 would amend Public Act 372 of 1927 (MCL 28.421-28.435), to require that those seeking a concealed pistol permit must meet certain federal eligibility standards.

The bill would prohibit issuing a license to an applicant under Sections 2 or 5b [which concern licenses to purchase, carry, or transport firearms; and to carry concealed pistols, respectively], unless both the following applied:

- The issuing agency had determined through the federal National Instant Criminal Background Check System (NICS) that the applicant was not prohibited under federal law from possessing or transporting a firearm.
- The issuing agency had verified through the U. S. Immigration and Customs Enforcement (ICE) databases that the applicant was not an illegal alien, or a nonimmigrant alien.

ARGUMENTS:

For:

House Bill 4978 brings Michigan into compliance with federal laws that govern the purchase and transport of concealed pistols. The legislation is necessary in order to ensure homeland security during an era when terrorists threaten the safety of our citizens.

Against:

The Shooters Alliance for Firearms Rights opposes House Bill 4978, given legislation pending in the U.S. Congress, because it does not contain a provision ensuring applicants the right of due process. To achieve due process, they recommend an amendment be added to the bill stating, "The issuing agency has determined that the applicant is not prohibited under federal law *by means of adjudication* from possessing or transporting a firearm."

The Alliance spokesmen point out that House Bill 4978 is written to prohibit a person from making applications either to purchase or to carry a concealed pistol if that person's name were to appear on either the federal government's terrorist watch list, or the so-called 'do not fly' list used to screen airplane travelers. Although the Alliance believes it is vitally important to prevent suspected terrorists from obtaining firearms, the group's spokesmen note that the two lists maintained by the federal government are unreliable, sometimes preventing the movement of innocent people having the same names as those under suspicion of unlawful behavior. Under House Bill 4978, these unfortunate people also would be unable to apply either to purchase a pistol, or carry it concealed. Spokesmen from the Alliance also observe that the criteria for list development are confidential since they are classified as top-secret information, and further, there are no

means either to review the federal lists, or to have one's name removed from them. In effect, the due process rights of both U. S. citizens and legal resident aliens may be denied, should a person's name appear on either of these lists.

Response:

Some who support House Bill 4978 acknowledge this concern as a legitimate one. However, they say the law written by the U. S. Congress should be amended to ensure due process protections for citizens, not this proposed state statute.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.