

Legislative Analysis



COUNTY CONCEALED WEAPONS LICENSING BOARDS: ELIMINATE & REVISE CPL PROCESS

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Senate Bill 789 (Substitute S-2)

Senate Bill 790 (Substitute S-1)

Sponsor: Sen. Mike Green

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 11-12-14

A SUMMARY OF SENATE BILLS 789 AND 790 AS PASSED BY THE SENATE 6-10-14

Senate Bill 789 will amend the Handgun Licensing Law to:

- Abolish county concealed weapon licensing boards.
- Transfer the duties of the county boards to county clerks with some duties going to the courts.
- Require the MSP to conduct investigations of CPL applicants as to eligibility.
- Give civil immunity to clerks and law enforcement entities if a CPL holder later commits a crime or negligent act.
- Allow an applicant for a CPL renewal to certify that he or she has completed educational and firing range requirements (and the county clerk could not otherwise require verification of the statements in the certification).
- Decrease license and renewal fees.
- Require each county to establish a concealed pistol licensing fund.
- Allow county clerks to take fingerprints of applicants.
- Establish a hearing process for suspensions and revocations.
- Allow the subject of a PPO for domestic violence or stalking to receive a CPL unless the order includes a restriction that the applicant is not allowed to purchase or possess a firearm.

Senate Bill 790 will make technical revisions to the sentencing guidelines to comport with changes made by SB 789 (MCL 777.11b).

The bills would take effect July 1, 2015. Senate Bill 790 is tie-barred to Senate Bill 789, meaning that Senate Bill 790 cannot take unless Senate Bill 789 is also enacted.

Senate Bill 789

Briefly speaking, significant amendments to the Handgun Licensing Act (MCL 28.421 et al.) include, but are not limited to, the following:

County concealed weapon licensing boards eliminated

Beginning July 1, 2015, county concealed weapon licensing boards will be eliminated. Provisions establishing the boards will be eliminated, as will references to the boards contained throughout the act.

Each board must transfer all license applications and official documents in its possession to its county clerk no later than 12 midnight June 30, 2015. A license to carry a concealed pistol issued by the board prior to that deadline is valid and remains in effect until the license expires or as otherwise provided by law.

Pending applications must be processed by the county clerk. Applicants whose applications had been pending would be eligible for a receipt that would serve as a concealed pistol license until a license or notice of disqualification were issued.

Responsibilities of county clerks

A county clerk would be responsible for:

- ❖ Storing and maintaining all records related to issuing a license or notice of statutory disqualification in that county.
- ❖ Issuing licenses to carry a concealed pistol.
- ❖ Issuing notices of statutory disqualification, notices of suspensions, and notices of revocations.

The bill would also allow county clerks to take fingerprints of applicants for a license or license renewal.

A suspended or revoked license must be retained by the clerk as an official record for one year after the license's expiration, unless it is reinstated or a new license issued.

A county clerk must mail an initial CPL or renewal license by first-class mail in a sealed envelope. A replacement license could be issued in person at the time of application for a replacement license and payment of replacement fee (\$10).

Department of State Police

The MSP would have to investigate applicants for a concealed pistol license (CPL) regarding eligibility under the act. Currently, this is done by the county concealed weapons boards.

MSP would also verify certain requirements through the Law Enforcement Information Network, LEIN (e.g., to see if the applicant is the subject of a court order for involuntary treatment of a mental illness); currently, county sheriffs perform this function. MSP must also report all statutory disqualifications of an applicant to the county clerk.

The bill would revise criteria required to be included in an annual report filed with the Secretary of the Senate and the Clerk of the House of Representatives as follows:

- ❖ Report the number of statutorily disqualified applicants and categories for statutory disqualifications rather than the number of CPLs denied and categories for denial.
- ❖ Report the number of CPLs suspended and the categories, in addition to those revoked.
- ❖ Eliminate provisions regarding the number of charges of state civil infractions of the act or charges of criminal violations, and instead require the total number of licensees found responsible for a civil violation of the act, the total number of civil violations categorized by offense, the total number of individuals licensed to carry a concealed pistol convicted of a crime, and the total number of those criminal convictions categorized by offense.
- ❖ Report the actual costs incurred per permit for the MSP.

Temporary licenses

Currently, the act contains a process by which an applicant for a CPL who is also a petitioner for a personal protection order (PPO) may obtain a temporary license. The bill would revise the process, with a court making the determination of the safety issues regarding the applicant and immediately ordering the county clerk to issue a temporary license. The bill would cap the fee charged by the clerk for the temporary license to \$10.

When the CPL or a notice of statutory disqualification is issued to the applicant, the applicant must immediately surrender the temporary license to the county clerk by mail or in person.

Applying for a CPL

Current provisions would be amended to reflect the elimination of the county boards and transference of duties to the county clerks or MSP.

The provision requiring a passport-quality photograph to be included with the application would allow, if the applicant did not provide that photo, the county clerk to take a photograph of the applicant at no charge or for a reasonable fee. Applicants could not be required to have the clerk or other vendor take the photograph in lieu of providing a photograph unless the applicant is not charged an additional fee or the fee is not rolled into any fee authorized by the act.

An application would also have to include a signature of the applicant obtained by the clerk at the time of application for use on the CPL.

A county clerk could not require a CPL applicant to submit any other additional forms, documents, letters, or other evidence of eligibility except as listed in Section 5b(1) or otherwise provided in the act. However, an applicant could voluntarily submit additional documentation to verify eligibility or to address potential disqualifying information that may arise during MSP's investigation.

Application and license fees would be reduced from \$105 to \$90, and no other charge, fee, cost, or assessment (unless specifically authorized in the act) could be added.

Currently, \$41 of the application/license fee goes to a county's general fund with \$26 of that going to the county clerk and \$15 to the county sheriff, with the balance being forwarded to the state treasurer to be credited to the MSP. The bill will instead direct that \$26 of each fee be deposited into the Concealed Pistol Licensing Fund with the balance going to the state treasurer to be credited to the MSP.

Revisions regarding issuance of a CPL

A county clerk, instead of the county board, would be required to issue and send a license to an applicant to carry a concealed weapon if the county clerk determines that all of the listed circumstances exist. One of those circumstances is that the applicant is not the subject of an order or disposition under a PPO related to domestic violence or stalking; the bill would apply this disqualification only if the PPO order includes a restriction that the applicant is not allowed to purchase or possess a firearm.

The bill also make numerous revisions that are editorial or technical in nature.

Further, county clerks, MSP, county sheriffs, local police agencies, and other entities that maintain fingerprinting capability must provide reasonable access to fingerprinting services during normal business hours as necessary to comply with the act's requirements.

At the time fingerprints are taken, the entity must issue a receipt to the applicant that contains all of the following:

- ❖ Name of the applicant.
- ❖ Date and time the receipt is issued.
- ❖ Amount paid.
- ❖ Name of the entity providing the fingerprint services.
- ❖ A statement that says, among other things, the receipt was issued for the purpose of applying for a concealed pistol license, and, if a license or statutory disqualification is not issued within 45 days, the receipt will serve as a CPL when carried with an official state-issued ID. The receipt will be a valid CPL until a license or notice of disqualification is issued by the county clerk.

If an applicant's fingerprints are not classifiable by the FBI, MSP must immediately request a report based on the individual's name, date of birth, and other identifying information. Within five business days of completing the verification process, MSP must send the county clerk a list of an applicant's statutory disqualifications.

The bill deletes a provision requiring the issuance of a six-month temporary license if a fingerprint comparison report is not received by a board within 60 days after the FBI forwards it to the MSP. Instead, the bill specifies that the receipt issued at the time fingerprints are taken, as described above, will serve as a CPL if a license or notice of statutory disqualification is not issued by the county clerk within 45 days after the fingerprints were taken. A state-issued ID must also be carried for the receipt to be valid as a CPL.

The bill deletes a provision that waived the educational requirements for a CPL for an applicant who is a retired police officer or retired law enforcement officer. The bill would amend the definition of "retired police officer" to add that a police officer or law enforcement officer is considered to have retired in good standing if the officer receives a pension or other retirement benefit for service as a police officer or law enforcement officer or has actively maintained a Michigan Commission on Law Enforcement Standards or equivalent state certification for 15 or more consecutive years.

Renewal licenses

A renewal license would be valid in the same manner as for the initial license.

A county clerk must notify a licensee that the license was about to expire and may be renewed as provided in the act. The notification must be sent to the last known address of the licensee as shown on the records of the clerk. It must be sent in a sealed envelope by first-class mail not less than three months or more than six months before the current license's expiration date. An applicant is eligible for a renewal if the license is not expired, or expired within a five-year period before the date of application.

A member of the U.S. armed forces, reserves or the Michigan National Guard who is on official assignment or deployed outside the state could submit an application for renewal by first-class mail, with the required fee, a notarized application, and the licensee's assignment or deployment orders in a form required by the county clerk.

The MSP would have to complete the verification process and the county clerk would have to issue a renewal license or a notice of statutory disqualification within 45 days (shortened from 60 days) after the date of application. The clerk would have to send a receipt by first-class mail to an individual who submitted the renewal application to the address listed in the clerk's records. The receipt would have to include a statement that it could serve as a CPL when carried with the expired license and would be valid until a license or notice of statutory disqualification is issued.

If an individual applies for a renewal license before the expiration of the license, the expiration date of the current license would be extended until the renewal license or notice of statutory disqualification is issued; currently it is extended by only 180 days.

The clerk must notify the MSP after receiving a renewal application and the MSP must immediately enter into LEIN that an application has been submitted and the renewal is pending.

Renewal applications require the applicant to certify that the applicant has completed at least three hours' review of the required training and at least one hour of firing range time in the six months immediately preceding the renewal application. The bill would specify that the educational and firing range requirements are met if the applicant certifies on the renewal application form that the requirements have been met. The county clerk could not otherwise require verification of the statements made under this provision and shall

not require an applicant to obtain a certificate or undergo training other than as required by this provision.

County Concealed Pistol Licensing Fund

Each county would have to establish a Concealed Pistol Licensing Fund for the deposit of fees collected for the county clerk. The county treasurer would direct investment of the fund and credit to the fund interest and earnings. Expenditures would have to comply with the Uniform Budgeting and Accounting Act and funds used only for the cost of administering the act. Allowable expenditures would include, but not be limited to, staffing requirements; technology upgrades, including those required to take fingerprints by electronic means; office supplies; and document storage and retrieval systems and system upgrades.

Restoration of right to carry concealed weapon

Currently, a person prohibited from possessing, using, transporting, selling, carrying, shipping, or distributing a firearm or ammunition because of the commission of a felony may apply to the county concealed weapons licensing board for restoration of those rights; the bill would instead require a person to apply to the circuit court in the county in which the person resides.

Concealed pistol application kits

Under the bill, kits would be available only at the offices of county clerks, during normal business hours, and other provisions would be amended to apply only to county clerks. The Department of State Police (MSP) would now provide the application kits to county clerks in electronic format.

Compilation of firearms laws by LSB

Currently, the Legislative Service Bureau must compile the Michigan firearms laws that apply to carrying a concealed pistol and provide copies to each county board for distribution. The bill would require the compilation to be provided to the MSP in an electronic format. The MSP must then provide a copy to each county clerk, along with information regarding the rights and responsibilities of applicants, license holders, county clerks, and the MSP under the act. MSP must also provide forms to appeal a notice of statutory disqualification, or suspension or revocation of a license. The compilation of the firearms laws, information, and appeal forms would be provided by electronic format.

The county clerk would have to distribute the compilation, information, and forms at no charge to CPS applicants at the time the application is submitted and require the applicant to sign a written acknowledgement of the receipt of those documents.

CPL holder responsibilities

- ❖ A licensee may notify a county clerk that he or she has moved to a different county within the state in order to receive renewal notifications.
- ❖ A licensee may voluntarily surrender the license without explanation; MSP shall enter that information into LEIN along with the date the license was surrendered.

Civil immunity

A county clerk, county sheriff, county prosecuting attorney, police department, or MSP would not be liable for civil damages as a result of issuing a CPL to an individual who later commits a crime or a negligent act.

CPL/requirements for the physical license

Beginning July 1, 2015, the license would have to be made of plastic laminated paper or hard plastic. No additional fee could be charged for the license unless allowed under the act. A fee of not more than \$10 could be charged for an optional hard plastic license only if the county clerk also provides the option of obtaining a plastic laminated paper license at no charge.

The license would have to indicate if it were a duplicate or temporary license. If a temporary one, the license would have to indicate that it does not exempt the holder from complying with all applicable laws for the purchase of firearms.

Appeals

An applicant may appeal to the circuit court a statutory disqualification or failure to be issued a receipt complying with the receipt requirements issued when fingerprints are taken. If a court determined the disqualification, failure to provide a proper receipt, or failure to issue a license was arbitrary and capricious (in addition to being erroneous, as is currently the case), the court would have to order the clerk to issue a license or receipt.

If the action was clearly erroneous, the court could also refund any filing fees. If arbitrary and capricious, the court would order the county clerk, the entity taking the fingerprints, or the state to pay the applicant's actual costs and actual attorney fees in appealing the action, based on the degree of responsibility of the clerk, fingerprint entity, or state. Currently, an appeal of a license denial by a board found to be arbitrary and capricious requires the court to order the state to pay 1/3 and the county to pay 2/3 of the actual costs and attorney fees of the applicant in appealing the denial.

The bill eliminates a provisions requiring an applicant who files a frivolous appeal to pay the actual costs and actual attorney fees of the county concealed weapon licensing board in responding to the appeal.

Violations of act

A CPL holder who is stopped by a peace officer would have to disclose if a pistol or a personal Taser was concealed upon his or her person or in the vehicle upon request by that peace officer instead of immediately upon being stopped. Failure to do so is a state civil infraction that can result in suspension or revocation of the CPL. If the court determines the license is to be suspended or revoked, the court must notify the county clerk that issued the license to do so. The county clerk must then notify the MSP and the MSP must immediately enter the suspension or revocation into LEIN.

The act prohibits a licensee from carrying a concealed pistol or personal Taser while under the influence of alcohol and/or a controlled substance or while having a prohibited

bodily alcohol content of .10 grams or more. Instead of requiring a court to permanently revoke the person's license, the bill would instead permit the court to order the county clerk to revoke the license (but not permanently). The clerk must notify MSP of the revocation for entry into LEIN.

If the person had a bodily alcohol content of .08 or more but less than .10 grams, the license could be ordered suspended for three years instead of being revoked for three years. A bodily alcohol level of more than .02 but less than .08 grams could result in a one-year suspension instead of a one-year revocation. These penalties would be in addition to applicable criminal penalties.

Refusal to take a chemical test would result in the court ordering the county clerk to suspend the license for one year; the clerk must notify the MSP to enter the suspension into LEIN.

"Under the influence of alcoholic liquor or a controlled substance" would mean that the individual's ability to properly handle a pistol or to exercise clear judgment regarding the use of that pistol was substantially and materially affected by the consumption of alcoholic liquor or a controlled substance.

Suspensions or revocations

A court could order a county clerk who issued a CPL to suspend or revoke that license for violations of the act, as provided in the act.

Notice of a suspension or revocation must include the statutory reason, the record supporting that determination, the length of the suspension or revocation, and the process for reinstating the license when the suspension ends or for reapplying for a license that was revoked, correcting errors in the record, or appealing the suspension or revocation. If the individual is acquitted of the charge leading to the suspension, or the charge dismissed, the court must notify the county clerk who shall automatically reinstate the license if the license is not expired and the individual is otherwise qualified to receive a CPL license, as verified by MSP. A clerk could not charge a reinstatement fee for a suspension.

The act specifies that a license cannot be revoked except upon written complaint and an opportunity for a hearing. The bill would apply to this suspensions, as well.

The bill would entitle an individual to be represented by legal counsel during a hearing and to present relevant evidence, including the testimony of witnesses, on his or her own behalf. A suspension would have to be stated in terms of years, months, or days, or until the final disposition of the charge. The licenses would have to promptly surrender the license to the county clerk after being notified that the license had been revoked or suspended.

Upon expiration of the suspension period, the applicant may apply for a renewal license. The clerk would have to issue a receipt to the applicant that stated that the receipt was

issued for the purpose of applying for a renewal of a concealed pistol license following a period of suspension or revocation, but does not authorize the person to carry a concealed pistol in the state.

If the suspension or revocation was because the applicant was a subject of a PPO restricting the ability to carry or purchase a firearm, and the license had been surrendered by the licensee, upon expiration of the order, the court would have to notify the county clerk, who must automatically reinstate the license if it is not expired and the individual is otherwise qualified to receive a CPL, as verified by the MSP. A fee could not be charged for the reinstatement.

Pistol training

The required training or safety program for eligibility for a CPL must be provided within five years preceding the date of application for a CPL. A certificate of completion must, after July 1, 2015, contain the instructor's name and address, and telephone number if available and the name and telephone number of the state agency or state or national firearms training organization that has certified the individual as an instructor, his or her instructor certification number, if any, and the expiration date of the certification; this would have to be printed on the certification or provided in a separate document.

The instructor could be certified by another state in addition to this state or a national firearms training organization as is currently required. A county clerk could not require any other certification.

A training certificate that does not meet state requirements applicable at the time of issuance could otherwise meet the act's requirements if the applicant provides information that reasonably demonstrates that the certificate or the training meets applicable requirements.

FISCAL IMPACT:

A fiscal analysis of Senate Bill 789 is in process. Generally speaking, the bill would significantly increase the workload of county clerks and the Michigan State Police, and increase associated costs, while reducing certain fees. According to an analysis by the Senate Fiscal Agency, the background check requirements would require the MSP to add 58 FTEs at a total annual cost of \$8.4 million.

Senate Bill 790 would have no fiscal impact on state or local units of government.

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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.