Act No. 31
Public Acts of 2003
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STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Rep. Hummel

ENROLLED HOUSE BILL No. 4818

AN ACT 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 amended by 2002 PA 719.

The People of the State of Michigan enact:

Sec. 5b. (1) To obtain a license to carry a concealed pistol, an individual shall apply to the concealed weapon licensing board in the county in which that individual resides. The application shall be filed with the county clerk during the county clerk's normal business hours. The application shall be on a form provided by the director of the department of state police and shall allow the applicant to designate whether the applicant seeks a temporary license. The application shall be signed under oath by the applicant. The oath shall be administered by the county clerk or his or her representative. The application shall contain all of the following information:

(a) The applicant's legal name and date of birth and the address of his or her primary residence. If the applicant resides in a city, village, or township that has a police department, the name of the police department.

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

(c) A statement by the applicant authorizing the concealed weapon licensing board to access any record, including any medical record, pertaining to the applicant's qualifications for a license to carry a concealed pistol under this act. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes or if the applicant is convicted of a felony involving a pistol.

(d) A statement by the applicant regarding whether he or she has a history of mental illness that would disqualify him or her under subsection (7)(j) to (*l*) from receiving a license to carry a concealed pistol, and authorizing the concealed weapon licensing board to access the mental health records of the applicant relating to his or her mental health history. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be closed, the concealed weapon

licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

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

(f) A statement by the applicant whether he or she has been dishonorably discharged from the United States armed forces.

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

(h) The names, residential addresses, and telephone numbers of 2 individuals who are references for the applicant.

(i) A passport-quality photograph of the applicant provided by the applicant at the time of application.

(j) A certificate stating that the applicant has completed the training course prescribed by this act.

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

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

(4) The concealed weapon licensing board shall retain a copy of each application for a license to carry a concealed pistol as an official record. One year after the expiration of a concealed pistol license, the county clerk may destroy the record and maintain only a name index of the record.

(5) Each applicant shall pay a fee of $105.00 by any method of payment accepted by that county for payments of other fees and penalties. Except for a local police agency as provided in subsection (9), a unit of local government, an agency of a unit of local government, or an agency or department of this state shall not charge an additional fee, assessment, or other amount in connection with a license under this section. The fee shall be payable to the county. The county treasurer shall deposit $41.00 of each fee collected under this section in the general fund of the county and credit $26.00 of that deposit to the credit of the county clerk and $15.00 of that deposit to the credit of the county sheriff and forward the balance to the state treasurer. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police. The department of state police shall use the money received under this act to process the fingerprints and to reimburse the federal bureau of investigation for the costs associated with processing fingerprints submitted under this act. The balance of the money received under this act shall be credited to the department of state police.

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

(7) The concealed weapon licensing board shall issue a license to an applicant to carry a concealed pistol within the period required under this act after the applicant properly submits an application under subsection (1) and the concealed weapon licensing board determines that all of the following circumstances exist:

(a) The applicant is 21 years of age or older.

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

(c) The applicant has knowledge and has had training in the safe use and handling of a pistol by the successful completion of a pistol safety training course or class that meets the requirements of section 5j, and that is available to the general public and presented by a law enforcement agency, junior or community college, college, or public or private institution or organization or firearms training school.

(d) The applicant is not the subject of an order or disposition under any of the following:

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

(*ii*) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107.

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

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

(*v*) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

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

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

(g) The applicant has not been dishonorably discharged from the United States armed forces.

(h) The applicant has not been convicted of a misdemeanor violation of any of the following in the 8 years immediately preceding the date of application:

(*i*) Section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a (failing to stop when involved in a personal injury accident).

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

(*iii*) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m punishable under subsection (4) of that section (drunk driving, commercial vehicle).

(*iv*) Section 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.626 (reckless driving).

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

(*vi*) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft with alcohol with prior conviction).

(*vii*) Section 29 of the weights and measures act, 1964 PA 283, MCL 290.629 (hindering or obstructing weights and measures enforcement officer).

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

(*ix*) Section 81134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134, punishable under subsection (5) or (6) of that section (operating ORV under the influence, second or subsequent offense).

(*x*) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence with prior conviction), punishable under section 82128(1)(b) or (c) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82128.

(*xi*) Section 80176 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, and punishable under section 80177(1)(b) (operating vessel under the influence, second or subsequent offense).

(*xii*) Section 7403 of the public health code, 1978 PA 368, MCL 333.7403.

(*xiii*) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (4) of that section.

(*xiv*) Section 7 of 1978 PA 33, MCL 722.677 (displaying sexually explicit materials to minors).

(*xv*) Section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81 (assault or domestic assault).

(*xvi*) Section 81a(1) or (2) of the Michigan penal code, 1931 PA 328, MCL 750.81a (aggravated assault or aggravated domestic assault).

(*xvii*) Section 115 of the Michigan penal code, 1931 PA 328, MCL 750.115 (entering without breaking).

(*xviii*) Section 136b(6) of the Michigan penal code, 1931 PA 328, MCL 750.136b (fourth degree child abuse).

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

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

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

(*xxii*) Section 215 of the Michigan penal code, 1931 PA 328, MCL 750.215 (impersonating sheriff, conservation officer, coroner, constable, or police officer).

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

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

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

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

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

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

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

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

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

(*xxxii*) Section 234 of the Michigan penal code, 1931 PA 328, MCL 750.234 (intentionally discharging a firearm aimed without malice).

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

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

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

(*xxxvi*) Section 235 of the Michigan penal code, 1931 PA 328, MCL 750.235 (intentionally discharging a firearm aimed without malice causing injury).

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

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

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

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

(*xli*) Section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a (indecent exposure).

(*xlii*) Section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h (stalking).

(*xliii*) Section 1 of 1952 PA 45, MCL 752.861 (reckless, careless, or negligent use of a firearm resulting in injury or death).

(*xliv*) Section 2 of 1952 PA 45, MCL 752.862 (careless, reckless, or negligent use of a firearm resulting in property damage).

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

(*xlvi*) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (*i*) to (*xlv*).

(i) The applicant has not been convicted of a misdemeanor violation of any of the following in the 3 years immediately preceding the date of application unless the misdemeanor violation is listed under subdivision (h):

(*i*) Section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625 (operating under the influence).

(*ii*) Section 625a of the Michigan vehicle code, 1949 PA 300, MCL 257.625a (refusal of commercial vehicle driver to submit to a chemical test).

(*iii*) Section 625k of the Michigan vehicle code, 1949 PA 300, MCL 257.625k (negligently fails to comply).

(*iv*) Section 625*l* of the Michigan vehicle code, 1949 PA 300, MCL 257.625*l* (circumventing an ignition interlocking device).

(*v*) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m, punishable under subsection (3) of that section (operating a commercial vehicle with alcohol content).

(*vi*) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft under the influence).

(*vii*) Section 81134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 (operating ORV under the influence).

(*viii*) Section 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81135 (operating ORV having consumed controlled substance).

(*ix*) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence).

(*x*) Part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461 (controlled substances).

(*xi*) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (3) of that section.

(*xii*) Section 167 of the Michigan penal code, 1931 PA 328, MCL 750.167 (disorderly person).

(*xiii*) Section 174 of the Michigan penal code, 1931 PA 328, MCL 750.174 (embezzlement).

(*xiv*) Section 218 of the Michigan penal code, 1931 PA 328, MCL 750.218 (false pretenses).

(*xv*) Section 356 of the Michigan penal code, 1931 PA 328, MCL 750.356 (larceny).

(*xvi*) Section 356d of the Michigan penal code, 1931 PA 328, MCL 750.356d (retail fraud).

(*xvii*) Section 359 of the Michigan penal code, 1931 PA 328, MCL 750.359 (larceny-vacant building).

(*xviii*) Section 362 of the Michigan penal code, 1931 PA 328, MCL 750.362 (larceny by conversion).

(*xix*) Section 362a of the Michigan penal code, 1931 PA 328, MCL 750.362a (defrauding lessor).

(*xx*) Section 377a of the Michigan penal code, 1931 PA 328, MCL 750.377a (malicious destruction of property).

(*xxi*) Section 380 of the Michigan penal code, 1931 PA 328, MCL 750.380 (malicious destruction of real property).

(*xxii*) Section 479a of the Michigan penal code, 1931 PA 328, MCL 750.479a (failure to obey police direction).

(*xxiii*) Section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535 (receiving stolen property).

(*xxiv*) Section 540e of the Michigan penal code, 1931 PA 328, MCL 750.540e (malicious use of telephones).

(*xxv*) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (*i*) to (*xxiv*).

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

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

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

(m) The applicant is not under a court order of legal incapacity in this state or elsewhere.

(n) Issuing a license to the applicant to carry a concealed pistol in this state is not detrimental to the safety of the applicant or to any other individual. A determination under this subdivision shall be based on clear and convincing evidence of repeated violations of this act, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant's ability to carry a concealed pistol.

(8) Upon entry of a court order or conviction of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm in this section the department of state police shall immediately enter the order or conviction into the law enforcement information network. For purposes of this act, information of the court order or conviction shall not be removed from the law enforcement information network, but may be moved to a separate file intended for the use of the county concealed weapon licensing boards, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act.

(9) An individual, after submitting an application and paying the fee prescribed under subsection (5), shall request and have classifiable fingerprints taken by the county sheriff or a local police agency if that local police agency maintains fingerprinting capability. If the individual requests that classifiable fingerprints be taken by a local police agency, the individual shall also pay to that local police agency a fee of $15.00 by any method of payment accepted by the unit of local government for payments of other fees and penalties. The county sheriff or local police agency shall take the fingerprints within 5 business days after the request.

(10) The fingerprints shall be taken, under subsection (9), on forms and in a manner prescribed by the department of state police. The fingerprints shall be immediately forwarded to the department of state police for comparison with fingerprints already on file with the department of state police. The department of state police shall forward the fingerprints to the federal bureau of investigation. Within 10 days after receiving a report of the fingerprints from the federal bureau of investigation, the department of state police shall provide a copy to the submitting sheriff's department or local police agency as appropriate and the clerk of the appropriate concealed weapon licensing board. Except as provided in subsection (14), the concealed weapon licensing board shall not issue a concealed pistol license until it receives the fingerprint comparison report prescribed in this subsection. The concealed weapon licensing board may deny a license if an individual's fingerprints are not classifiable by the federal bureau of investigation.

(11) The concealed weapon licensing board shall deny a license to an applicant to carry a concealed pistol if the applicant is not qualified under subsection (7) to receive that license.

(12) A license to carry a concealed pistol that is issued based upon an application that contains a material false statement is void from the date the license is issued.

(13) Subject to subsections (10) and (14), the concealed weapon licensing board shall issue or deny issuance of a license within 45 days after the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10). If the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, the concealed weapon licensing board shall within 5 business days do both of the following:

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

(*i*) A statement of the specific and articulable facts supporting the denial.

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

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

(14) If the fingerprint comparison report is not received by the concealed weapon licensing board within 60 days after the fingerprint report is forwarded to the department of state police by the federal bureau of investigation, the concealed weapon licensing board shall issue a temporary license to carry a concealed pistol to the applicant if the applicant is otherwise qualified for a license. A temporary license issued under this section is valid for 180 days or until the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10) and issues or denies issuance of a license to carry a concealed pistol as otherwise provided under this act. Upon issuance or the denial of issuance of the license to carry a concealed pistol to an applicant who received a temporary license under this section, the applicant shall immediately surrender the temporary license to the concealed weapon licensing board that issued that temporary license.

(15) If an individual licensed under this act to carry a concealed pistol moves to a different county within this state, his or her license remains valid until it expires or is otherwise suspended or revoked under this act. A license to carry a concealed pistol that is lost, stolen, or defaced may be replaced by the issuing county clerk for a replacement fee of $10.00.

(16) If a concealed weapons licensing board suspends or revokes a license issued under this act, the license is forfeited and shall be returned to the concealed weapons licensing board forthwith.

(17) As used in this section:

(a) "Convicted" means 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 or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

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

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

(d) "Misdemeanor" means a violation of a penal law of this state or violation of a local ordinance substantially corresponding to a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine, or both.

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

Enacting section 1. This amendatory act takes effect July 1, 2003.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor