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SFA



BILL ANALYSIS

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Senate Bill 987 (as introduced 3-3-98)
Sponsor: Senator Dave Jaye
Committee: Hunting, Fishing and Forestry

Date Completed: 4-15-98

CONTENT

The bill would amend the handgun licensure Act to establish requirements for applying for a license to carry a concealed pistol; require a concealed weapon licensing board 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; require the destruction of applicants' fingerprints; require an applicant to document knowledge or training in the safe use and handling of a pistol; provide for the issuance of a temporary license for up to 180 days, plus a 180-day renewal period; require local police departments, county sheriffs, and county clerks to provide concealed weapon application kits to individuals wishing to apply for a license; and require the State Police to compile the State's firearms laws for distribution to applicants, create and maintain a computerized data base of applicants, and report annually to the Legislature.

The bill would take effect January 1, 1999. The bill is tie-barred to Senate Bills 967 and 988, which also pertain to concealed weapons, and several bills that have not yet been introduced. The following is a detailed description of the bill.

Concealed Weapon License Application

The bill would allow an individual to apply to the concealed weapon licensing board in his or her county for a license to carry a concealed pistol. The application would have to be filed with the county clerk, as clerk of the board, during normal business hours. The application would have to be on a form provided by the Director of the Department of State Police and would require the applicant to designate whether he or she sought a temporary license pending issuance of a regular license. The applicant would have to provide two

photographs of the applicant in passport size, style, and quality at the time of filing the application. The application would have to be signed under oath, administered by the county clerk or his or her representative.

The application would have to contain the applicant's name and address, and a statement including the following information:

- The applicant was familiar with the Act's concealed weapon provisions.
- The applicant met all criteria for a license.
- Whether the applicant had ever been convicted of a crime involving domestic violence.
- The facts supporting the issuance of a temporary license, if the applicant sought one.
- Authority to the board to gain access to any juvenile or family court records relating to the applicant's eligibility for a license.
- Whether the applicant had been treated for substance abuse within the preceding five years or had a history of mental illness that would disqualify him or her from receiving a license, and a statement authorizing the board to gain access to all related medical records of the applicant.

The applicant could request that information from court or medical records be reviewed in closed session. The applicant would have the right to be present in the session. This information would be confidential and could not be disclosed to any person except for purposes under the Act. The application also would have to include the name, address, and telephone number of one of the following individuals who were related to the applicant by marriage, blood, or adoption and were 18 years of age or older: his or her spouse, parent,

grandparent, great-grandparent, uncle or aunt, brother or sister, nephew or niece, son or daughter, grandson or granddaughter, or great-grandson or great-granddaughter. If none of the applicant's relatives were 18 years of age or older, the applicant would have to state that. The license application also would require a list of names, addresses and phone numbers of two individuals not related to the applicant, who could be contacted by the board as the applicant's references. A police agency could not discipline a peace officer who served as a reference for an applicant.

If the applicant were a peace officer, the application would have to indicate that information and the name, address, and phone number of the police agency that employed the peace officer.

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 board would have to retain a copy of each application for a license to carry a concealed pistol as an official record.

In addition, the bill provides that the board could investigate any resident of the county who applied for a license to determine eligibility. The board could require the applicant to appear before the board for a conference and could deny an application for a license if the applicant failed or refused to appear without just cause.

License Requirements and Qualifications

Fee. Each applicant would be required to pay an application fee, payable to the county, when the application was submitted. The fee, which the county treasurer would have to deposit in the general fund of the county, could not exceed the actual and reasonable costs of processing the application.

Criteria. The board would be required promptly to issue a license to an applicant to carry a concealed pistol if the applicant properly submitted an application and the board determined that the applicant was 21 years of age or older, or was at least 18 but under 21 and was required to carry a concealed pistol in the course of employment. The board also would have to determine that the applicant was a current resident of this State and had lived in Michigan for over one year. In addition,

the board would have to determine that the applicant was not any of the following:

- The subject of an order entered into the Law Enforcement Information Network (LEIN) 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.
- Convicted of a violent felony or confined for a felony within the previous eight years, or subject to a pending felony charge.
- Convicted of or confined for a misdemeanor punishable by imprisonment for more than one year or convicted of or confined for a violent misdemeanor in the previous eight years.

("Convicted" or "conviction" 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 or a juvenile adjudication for a violation that if committed by an adult would be a crime, regardless of whether the penalty was rebated or suspended. "Violent felony" and "violent misdemeanor" would include violations of various sections of the Michigan Penal Code.)

(Currently, an applicant must be at least 18 years, 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 LEIN under various sections of the law.)

Safety Training. Before the board issued a license, the applicant would be required to document knowledge or training in the safe use and handling of a pistol by a successfully completing one of the following: a pistol 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, or public or private institution or firearms training school with instructors certified by the NRA or by this State; or a law enforcement firearms training safety course or class offered for security guards, investigators, special deputies, or law enforcement officers.

The pistol training or safety program course would have to consist of at least 12 hours of 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 have at least four hours of range time and provide a certificate of completion.

The board also would have to determine that issuing a license to carry a concealed pistol would not be detrimental to the safety of the applicant or to any other individual.

Fingerprints. The applicant 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, the fingerprints would have to be 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 report to the local police department or the county sheriff and the concealed weapon licensing board. The State Police would have to destroy the fingerprints when it provided the comparison report to the local police or county sheriff and the board, or after 30 days following submission of the fingerprints, whichever was earlier. If the FBI did not return the fingerprints within the 30-day period, the State Police would have to require the FBI to destroy or return them.

The board could not issue a license to an applicant until it had received the fingerprint comparison reports. If the board did not receive a report within 30 days after the fingerprints were submitted, however, the requirements for the report would be waived and the board could not refuse issuance of a license on the ground that the board did not receive the report.

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

issued unless the board receives reports from the State Police and the FBI that the applicant was not convicted or confined for a felony within the eight-year period. In case of emergency, the board may grant a temporary license for up to 30 days pending the fingerprint reports.)

Firearm Law Compilation

The Department of State Police would be required to compile the State's firearms laws, including laws applicable to carrying a concealed pistol, and provide copies to each licensing board for distribution. The board would be required to distribute a copy of the compilation to each individual who applied for a license. The board would have to require the applicant to sign a written statement acknowledging receipt of the compilation.

Temporary License

A board could issue a temporary license to carry a concealed pistol to an applicant if it determined that there was probable cause to believe safety of the applicant or a member of the applicant's family was endangered by the applicant's inability to obtain immediately a license to carry a concealed pistol. A temporary license to carry a concealed pistol would have to be on a form provided by the Department of State Police, unrestricted, and valid for up to 180 days. A temporary license could be renewed for one additional period of 180 days.

Licensing Limitations and Denials

A board would have to issue a license to an applicant unless the applicant was not qualified under the bill and/or the board determined that issuing a license to the applicant threatened the safety of the applicant or any other individual. A license that was issued based upon an application that contained a material false statement would be void.

In addition, if the board issued a license to an applicant 18 years of age or older but less than 21 years of age, the license would have to be restricted to allow the applicant to carry a concealed weapon only for employment.

Further, the board 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 board, whichever occurred first. If the board denied issuance of the license, it would immediately have to inform the

applicant in writing of the reasons for the denial, including specific facts and documentary evidence, and inform the applicant of his or her right to petition the district court for review of the denial.

(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.)

Concealed Weapon Application Kits

The local police departments, county sheriffs, and county clerks 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 a concealed weapon application kit.

Concealed Weapon License

A license would have to be in a form prescribed by the State Police. 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 license's effective dates, any restrictions, a statement that the license was valid throughout the State, and a statement that improper discharge or use could result in criminal and civil liability.

Data Base and Annual Report

Each board would be required promptly to provide the Department of State Police with the following information about each individual who applied for a license: name, address, phone number, whether he or she was a peace officer, and whether the application was pending, granted, or denied. The information would be subject to disclosure under the Freedom of Disclosure Act and would have to be disclosed to the public by the board, unless the applicant was a peace officer.

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 weapon license number and expiration date, any imposed restrictions, and if the applicant were denied a license, the reasons for that denial. This information also would be entered into the LEIN. 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, for each county board.

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 was terminated, and could apply for a renewal license. A concealed weapon license would be valid for three years and could be renewed in the same manner as the original license except the renewal fee could not exceed the actual and reasonable costs of processing the application, fingerprints would not be required, and the educational training requirements would be waived upon the presentation of satisfactory evidence that the individual had completed at least three hours of training review and firing range experience six months prior to the renewal.

Currently, a licensing renewal fee is not required for an applicant who is a retired peace 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

A police agency or other employer could not prohibit an employee from applying for and receiving a license to carry a concealed pistol, or carrying a concealed pistol with a license as specified under the Act. A police agency could not discipline or 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, however, could prohibit an employee from carrying a concealed pistol in the course of employment with that employer. ("Police agency" would mean the Department of State Police, a city, village, or township police department, a county sheriff, a township constable, or a police department or public safety department of a college or university.)

Revocation

The bill would delete current provisions of the Act that allow a licensing board to revoke any license issued after receiving a certificate of any magistrate showing that a licensee has been convicted of a felony or 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, instead, would allow the licensing board to revoke a license if the board determined that the individual committed any violation of the Act (other than 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 board determined that the individual was not eligible under the Act to receive a concealed pistol license. As currently provided, a license could not be revoked except upon written complaint and an opportunity for a hearing before the board.

Licensing Exemptions

The current Act exempts the following 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 an authorized organization using a pistol in the course of his or her duties with that entity.

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, and Section 9d, which provides that a firearm possessed in violation of the Act is subject to forfeiture.

MCL 28.428 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would require the Department of State Police to compile and distribute copies of the firearms laws of the State for distribution to each individual who applied for a concealed weapon permit. The cost of meeting this requirement is not known at this time. The Department also would be required to create and maintain a computerized data base of applicants and license-holders and provide an annual report to the Legislature.

Fiscal Analyst: B. Baker

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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.