

**SUBSTITUTE FOR
SENATE BILL NO. 79**

A bill to amend 1927 PA 372, entitled

"An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms, gas ejecting devices, and electro-muscular disruption devices; to prohibit the buying, selling, or carrying of certain firearms, gas ejecting devices, and electro-muscular disruption devices without a license or other authorization; to provide for the forfeiture of firearms and electro-muscular disruption devices 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 15 (MCL 28.435), as added by 2000 PA 265, and by adding section 9.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) An individual who stores or leaves a firearm
2 unattended on premises under the individual's control, and who
3 knows or reasonably should know that a minor is, or is likely to
4 be, present on the premises, shall do 1 or more of the following:

5 (a) Store the firearm in a locked box or container.

6 (b) Keep the firearm unloaded and lock the firearm with a
7 locking device that is properly engaged to render the firearm
8 inoperable by any individual other than the owner or an authorized
9 user.

10 (2) An individual who enters onto the premises of another
11 individual, stores or leaves a firearm unattended on those
12 premises, and who knows or reasonably should know that a minor is,
13 or is likely to be, present on the premises, shall do 1 or more of
14 the following:

15 (a) Store the firearm in a locked box or container.

16 (b) Keep the firearm unloaded and lock the firearm with a
17 locking device that is properly engaged to render the firearm
18 inoperable by any individual other than the owner or an authorized
19 user.

20 (c) Before entering onto the premises, do both of the
21 following:

22 (i) In the individual's motor vehicle, store the firearm in a
23 locked box or container in that vehicle, or keep the firearm
24 unloaded and lock the firearm with a locking device that is
25 properly engaged to render the firearm inoperable by any individual
26 other than the owner or an authorized user.

27 (ii) Lock the individual's motor vehicle.

28 (3) An individual is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than
2 \$500.00, or both, if the individual violates subsection (1) or (2)
3 by failing to store or leave a firearm in the required manner and
4 as a result of the violation both of the following occur:

5 (a) A minor obtains the firearm.

6 (b) The minor does either of the following:

7 (i) Possesses or exhibits the firearm in a public place.

8 (ii) Possesses or exhibits the firearm in the presence of
9 another person in a careless, reckless, or threatening manner.

10 (4) If an individual violates subsection (1) or (2) by failing
11 to store or leave a firearm in the required manner and, as a result
12 of the violation, a minor obtains the firearm and discharges it to
13 inflict injury upon the minor or any other individual, the
14 individual is guilty of a felony punishable by imprisonment for not
15 more than 5 years or a fine of not more than \$5,000.00, or both.

16 (5) If an individual violates subsection (1) or (2) by failing
17 to store or leave a firearm in the required manner and, as a result
18 of the violation, a minor obtains the firearm and discharges it to
19 inflict death upon the minor or any other individual, the
20 individual is guilty of a felony punishable by imprisonment for not
21 more than 15 years or a fine of not more than \$7,500.00, or both.

22 (6) This section does not apply under any of the following
23 circumstances:

24 (a) A minor who does all of the following:

25 (i) Obtains a firearm with the permission of the minor's parent
26 or guardian.

27 (ii) Uses or possesses the firearm while the minor is under the
28 direct supervision of the minor's parent, guardian, or any
29 individual who is 18 years of age or older and who is authorized by

1 the person's parent or guardian.

2 (iii) Uses or possesses that firearm during any of the
3 following:

4 (A) The minor's employment.

5 (B) Ranching or farming.

6 (C) Target practice, hunting, or instruction in the safe use
7 of a firearm.

8 (b) A minor who obtains a firearm through the minor's unlawful
9 entry of any premises or the motor vehicle where the firearm has
10 been stored.

11 (c) A minor who obtains a firearm while lawfully acting in
12 self-defense or defense of another.

13 (7) The department of health and human services shall do both
14 of the following:

15 (a) Inform the public of the penalties for failing to store or
16 leave a firearm in the manner required under this section.

17 (b) Publish lethal means counseling literature and provide
18 that literature to federally licensed firearms dealers for use
19 under section 15.

20 (8) A criminal penalty provided for under this section may be
21 imposed in addition to any penalty that may be imposed for any
22 other criminal offense arising from the same conduct.

23 (9) As used in this section:

24 (a) "Locked box or container" means a secure container that is
25 fully enclosed and locked by a padlock, key lock, combination lock,
26 or similar locking device to which a minor does not possess the key
27 or combination.

28 (b) "Locking device" means a trigger lock, cable lock, or
29 similar lock that prevents a firearm from discharging.

1 (c) "Minor" means an individual less than 18 years of age.

2 Sec. 15. (1) Except as provided in subsection (2), a federally
3 licensed firearms dealer shall not sell a firearm in this state
4 unless the sale includes 1 of the following:

5 (a) A commercially available trigger lock or other device
6 designed to disable the firearm and prevent the discharge of the
7 firearm.

8 (b) A commercially available gun case or storage container
9 that can be secured to prevent unauthorized access to the firearm.

10 (2) This section does not apply to any of the following:

11 (a) The sale of a firearm to a police officer or a police
12 agency.

13 (b) The sale of a firearm to a person ~~who~~**that** presents to the
14 federally licensed firearms dealer 1 of the following:

15 (i) A trigger lock or other device designed to disable the
16 firearm and prevent the discharge of the firearm together with a
17 copy of the purchase receipt for the federally licensed firearms
18 dealer to keep. A separate trigger lock or device and a separate
19 purchase receipt ~~shall be~~**are** required for each firearm purchased.

20 (ii) A gun case or storage container that can be secured to
21 prevent unauthorized access to the firearm together with a copy of
22 the purchase receipt for the federally licensed firearms dealer to
23 keep. A separate gun case or storage container and a separate
24 purchase receipt ~~shall be~~**are** required for each firearm purchased.

25 (c) The sale of an antique firearm. As used in this
26 subdivision, "antique firearm" means that term as defined in
27 section 231a of the Michigan penal code, 1931 PA 328, MCL 750.231a.

28 (d) The sale or transfer of a firearm if the seller is not a
29 federally licensed firearms dealer.

1 (3) A federally licensed firearms dealer shall not sell a
2 firearm in this state unless the firearm is accompanied with, free
3 of charge, ~~a~~**all of the following:**

4 (a) A brochure or pamphlet that includes safety information on
5 the use and storage of the firearm in a home environment.

6 (b) **A written warning informing the purchaser of the penalties**
7 **for failing to store or leave a firearm in the manner required**
8 **under section 9.**

9 (c) **Lethal means counseling literature published by the**
10 **department of health and human services under section 9.**

11 (4) Upon the sale of a firearm, a federally licensed firearms
12 dealer shall sign a statement and require the purchaser to sign a
13 statement stating that the sale is in compliance with subsections
14 (1), (2), and (3).

15 (5) A federally licensed firearms dealer shall retain a copy
16 of the signed statements prescribed in subsection (4) and, if
17 applicable, a copy of the receipt prescribed in subsection (2)(b),
18 for at least 6 years.

19 (6) A federally licensed firearms dealer in this state shall
20 post in a conspicuous manner at the entrances, exits, and all
21 points of sale on the premises where firearms are sold a notice
22 **informing the reader** that ~~says the following: "You may be~~
23 ~~criminally and civilly liable for any harm caused by a person less~~
24 ~~than 18 years of age who lawfully gains unsupervised access to your~~
25 ~~firearm if unlawfully stored."~~**failing to store or leave a firearm**
26 **in the manner required under section 9 is unlawful.**

27 (7) A federally licensed firearms dealer is not liable for
28 damages arising from the use or misuse of a firearm if the sale
29 complies with this section, any other applicable law of this state,

1 and applicable federal law.

2 (8) This section does not create a civil action or liability
3 for damages arising from the use or misuse of a firearm or
4 ammunition for a person, other than a federally licensed firearms
5 dealer, who produces a firearm or ammunition.

6 (9) Subject to subsections (10) to (12), a political
7 subdivision shall not bring a civil action against any person who
8 produces a firearm or ammunition. The authority to bring a civil
9 action under this section is reserved exclusively to the state and
10 can be brought only by the attorney general. The court shall award
11 costs and reasonable attorney fees to each defendant named in a
12 civil action filed in violation of this subsection.

13 (10) Subject to subsection (11), subsection (9) does not
14 prohibit a civil action by a political subdivision based on 1 or
15 more of the following, which the court shall narrowly construe:

16 (a) A breach of contract, other contract issue, or an action
17 based on a provision of the uniform commercial code, 1962 PA 174,
18 MCL 440.1101 to ~~440.11102~~, **440.9994**, in which the political
19 subdivision is the purchaser and owner of the firearm or
20 ammunition.

21 (b) Expressed or implied warranties arising from the purchase
22 of a firearm or ammunition by the political subdivision or the use
23 of a firearm or ammunition by an employee or agent of the political
24 subdivision.

25 (c) A product liability, personal injury, or wrongful death
26 action when an employee or agent or property of the political
27 subdivision has been injured or damaged as a result of a defect in
28 the design or manufacture of the firearm or ammunition purchased
29 and owned by the political subdivision.

1 (11) Subsection (10) does not allow an action based on any of
2 the following:

3 (a) A firearm's or ammunition's inherent potential to cause
4 injury, damage, or death.

5 (b) Failure to warn the purchaser, transferee, or user of the
6 firearm's or ammunition's inherent potential to cause injury,
7 damage, or death.

8 (c) Failure to sell with or incorporate into the product a
9 device or mechanism to prevent a firearm or ammunition from being
10 discharged by an unauthorized person unless specifically provided
11 for by contract.

12 (12) Subsections (9) ~~through to~~ (11) do not create a civil
13 action.

14 (13) Subsections (9) ~~through to~~ (11) are intended only to
15 clarify the current status of the law in this state, are remedial
16 in nature, and, therefore, apply to a civil action pending on the
17 effective date of this act.

18 (14) ~~Beginning September 1, 2000, a~~ **A** person who violates this
19 section is guilty of a crime as follows:

20 (a) Except as provided in subdivision (b) or (c), the person
21 is guilty of a misdemeanor punishable by imprisonment for not more
22 than 93 days or a fine of not more than \$500.00, or both.

23 (b) For a second conviction, the person is guilty of a
24 misdemeanor punishable by imprisonment for not more than 1 year or
25 a fine of not more than \$1,000.00, or both.

26 (c) For a third or subsequent conviction, the person is guilty
27 of a felony punishable by imprisonment for not more than 2 years or
28 a fine of not more than \$5,000.00, or both.

29 (15) As used in this section:

1 (a) "Federally licensed firearms dealer" means a person
2 licensed under ~~section 923 of title 18 of the United States Code,~~
3 18 U.S.C. ~~USC~~ 923.

4 (b) "Firearm or ammunition" includes a component of a firearm
5 or ammunition.

6 (c) "Person" means an individual, partnership, corporation,
7 association, or other legal entity.

8 (d) "Political subdivision" means a county, city, village,
9 township, charter township, school district, community college, or
10 public university or college.

11 (e) "Produce" means to manufacture, construct, design,
12 formulate, develop standards for, prepare, process, assemble,
13 inspect, test, list, certify, give a warning or instructions
14 regarding, market, sell, advertise, package, label, distribute, or
15 transfer.