



**House
Legislative
Analysis
Section**

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**CCW EXEMPTIONS FOR RESERVE &
PART-TIME POLICE OFFICERS**

**House Bill 6108 as passed by the House
Sponsor: Rep. Jim Howell**

**House Bill 6109 as passed by the House
Sponsor: Rep. Steve Vear**

**House Bill 6110 as passed by the House
Sponsor: Rep. Cameron Brown**

**House Bill 6111 as passed by the House
Sponsor: Rep. Laura Toy**

**House Bill 6113 as passed by the House
Sponsor: Rep. Andrew Raczkowski**

**Second Analysis (7-1-02)
Committee: Civil Law and the Judiciary**

House Bills 6108-6111 and 6113 (7-1-02)

THE APPARENT PROBLEM:

Public Act 381 of 2000 amended the handgun licensure act to revise the way citizens apply for and receive licenses to carry a concealed pistol. The act changed the process from one in which county gun boards made decisions about whether to grant licenses on a case-by-case basis, which many complained was unnecessarily restrictive and resulted in arbitrary and discriminatory decisions, to a system in which gun boards are required to issue a permit if certain requirements are met (commonly known as a "shall issue" system). The act also imposed a number of requirements on license applicants, including a requirement to complete a firearm safety training course and submit to a criminal records check, and restricted license holders from carrying pistols while under the influence of alcohol or a controlled substance or on certain premises, including on school grounds, at a child care center, sports arena, bar, hospital, house of worship, entertainment facility with a seating capacity of 2,500 or more, and in a college or university classroom or dormitory.

The handgun licensure act (Public Act 372 of 1927) contains the 2000 "CCW" revisions. The Michigan Penal Code (MCL 750.227) forbids a person from carrying a concealed pistol without a license (granted under the handgun licensure act). The penal code exempts peace officers (who are "regularly employed and paid" by the federal government, the state, or a

local government) from the requirement to obtain a CCW permit, but does not address reserve police officers or retired officers. Prior to the enactment of Public Act 381, which took effect on July 1, 2001, many counties routinely granted CCW licenses to retired and reserve police officers, and indeed, this was one of the criticisms of the old process: that to obtain a license in some counties, one had to be either a former police officer or meet some other highly restrictive standard. Thus, under the old system, there were very few requirements in the law for obtaining a CCW permit (i.e., no requirement for firearm safety training), but one had to obtain a license through a very selective system. Under the new law, the requirements are more stringent, but the process is considerably more democratic.

According to testimony from police officials, there have arisen several unintended consequences of the 2000 legislation. One affects reserve police officers, who are used by many police departments around the state to extend their manpower capabilities, generally for purposes of providing security and ensuring order at events attracting large groups of people. To carry a weapon legally, particularly in a vehicle, it is necessary to have a CCW license (or to be exempt from the licensing requirements). Prior to the passage of Public Act 381, reserve officers generally were able to obtain CCW licenses. Since the legislation

was enacted, these licensees are subject to the new restrictions generally applied to CCW licensees: they are not allowed to carry their weapon on the premises of those areas the law lists as restricted for CCW licensees: school property, churches, bars, sports arenas, and so forth. This prevents police departments from assigning reserve officers to help cover school events, such as football games and graduation ceremonies, and other similar community events that may be held on or near one of the restricted premises. The attorney general has ruled (in OAG #7098 – 2002) that reserve officers, if “regularly employed and paid” by a police agency, are exempt from the CCW licensing requirements, but apparently part-time or volunteer reserve officers are *not* exempt. The attorney general opined that a reserve officer must first apply to the appropriate county gun board for a determination whether he or she qualifies for an exemption. A county gun board must determine that a reserve officer is “regularly employed and paid” by a police agency, and this depends upon whether the person performs “substantial work that constitutes a large part of the officer’s daily activity”. In practice, then, many reserve police officers are required to obtain CCW permits and must abide by the law’s restrictions on licensees. This drastically limits the ability of police departments to use these officers, who are often volunteers, to supplement their forces. (Note: Subsequent to the introduction and House passage of this package of bills, the attorney general opined, in Opinion No. 7113 [June 28, 2002], that a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the “gun-free” zones established by the handgun licensure act; and if the officer is either a fully authorized “peace officer” or, alternatively, possesses a valid concealed pistol license issued under the handgun licensure act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.)

In addition, retired police officers, who have had extensive training and experience in handling weapons, are now subject to requirements to take handgun safety courses in order to obtain a CCW license (unless they held a CCW license as of July 1, 2001). This seems unnecessary and overly restrictive.

Further, though police officers are not subject to licensure to carry a concealed pistol, the alcohol provisions of the CCW licensing law specifically apply, not only to licensees, but to those exempted from the act (including peace officers, and also, while on duty, constables, certain Department of

Corrections employees, on-duty military personnel, and members of the national guard or reserves, as well as nonresidents who are licensed in their home state). These provisions prohibit a person from carrying a concealed pistol while under the influence of alcohol or a controlled substance, or while having a bodily alcohol content above certain levels, and also specify that acceptance of a license to carry a concealed pistol constitutes implied consent to submit to chemical analysis (collection of blood, breath, or urine for testing). Since state police troopers and officers of many other police departments are required to carry their firearms at all times, even when they are off-duty, many feel that subjecting them to these provisions is unfair and unnecessary. In addition, an officer working undercover may need to consume some alcohol in order to play the role assigned. Police representatives point out that, prior to the enactment of the 2000 legislation, each police department had its own policies regarding alcohol use and the carrying of weapons, which of course forbid being intoxicated while on duty or while subject to being called to duty. It is felt that these matters should continue to be handled by police department policies, rather than by statute.

THE CONTENT OF THE BILLS:

House Bills 6108 and 6109. Public Act 381 of 2000 requires persons applying for a CCW permit to complete a firearms safety course, but specifies that a peace officer or former peace officer who held a general nonrestricted license on July 1, 2001 was exempt from the educational requirements. House Bill 6109 would amend the act (MCL 28.425l) to delete the requirement that, to qualify for an exemption, a peace officer or former peace officer must have held a license on July 1, 2001; instead, under the bill, the exemption would apply to all peace officers and former peace officers. House Bill 6108 would amend another section of the act (MCL 28.425j) to specify that the educational requirements would not apply to a peace officer or former peace officer. (In both bills, a “peace officer or former peace officer” would be defined to mean an individual who is certified or was certified as a police officer or law enforcement officer by the Michigan Law Enforcement Officers Training Council or the Commission on Law Enforcement Standards, and who is [or was] employed full-time or part-time as a peace officer by the state or a political subdivision, or an individual who is a federal law enforcement officer who is authorized to carry a concealed pistol in the course of his or her duties.)

House Bill 6110 would amend the handgun licensure act (MCL 28.425y) to specify that the restrictions on carrying a concealed weapon on certain premises (school property, a child care facility, a sports arena or stadium, a bar, a place of worship, an entertainment facility with a seating capacity of 2,500 or more, a hospital, and a dormitory or classroom of a college or university) would not apply to a reserve or part-time peace officer while on duty as a peace officer and as authorized by the chief law enforcement officer of the police agency for which the person is a reserve or part-time peace officer.

House Bill 6111 would amend the Michigan Penal Code (MCL 750.231). Certain provisions of the code prohibit carrying a concealed weapon without a license, and prohibit possession of certain specified weapons, including automatic firearms, mufflers and silencers, bombs or bombshells, and gas ejecting devices. In addition, the penal code contains restrictions on transporting or possessing a loaded firearm in a vehicle or boat. Peace officers are exempt from these provisions. The bill would also exempt a reserve or part-time peace officer of a duly authorized police agency of the state as authorized by the state or a political subdivision of the state, while in the performance of his or her duties as a peace officer.

House Bill 6113. Public Act 381 prohibits a person from carrying a concealed pistol while under the influence of alcohol or a controlled substance, or while having a bodily alcohol content above certain levels. The statute sets three levels of violation:

- If a person is under the influence of alcohol or a controlled substance, or has a bodily alcohol content (BAC) of .10 or more grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the violation is a misdemeanor punishable by up to 93 days imprisonment, a fine of \$100, or both, and the CCW license must be permanently revoked.
- If the BAC level is .08 to .10, the violation is a misdemeanor punishable by up to 93 days imprisonment, a fine of \$100, or both, and the CCW license *may* be revoked *for up to three years*.
- If the BAC level is .02 to .08, the violation is a civil infraction, which *may* be punishable by a fine of up to \$100, and *may* result in license revocation for up to *one year*.

The act also specifies that acceptance of a license to carry a concealed pistol constitutes implied consent to submit to chemical analysis (collection of blood,

breath, or urine for testing). These provisions currently apply to license holders as well as to those *exempted* from licensure (peace officers, constables, certain Department of Corrections employees, on-duty military personnel, members of the national guard or reserves while on duty or drill, and nonresidents who are licensed in their home state to carry a concealed pistol).

House Bill 6113 would amend the handgun licensure act (MCL 28.425k) to specify instead that the civil infraction described above (BAC level of .02 to .08) would not apply to a peace officer or other person (except a nonresident) listed as exempt from licensure (DOC employees, etc.) *if* the person was either: not in uniform and on duty, or not in uniform and also required by his or her employer to be carrying a pistol. In addition, this provision of the act requires that if a person refused to take a chemical test for BAC, or if a person is tested and the results indicate any bodily alcohol content, the refusal or positive test result is to be reported in writing to the appropriate concealed weapon licensing board. Under the bill, for a peace officer or other person exempted from the civil infraction provision described above, a refusal to be tested or a positive test result would have to be reported to the person's employer.

BACKGROUND INFORMATION:

Reserve police officers. Reserve (or auxiliary) police officers are used by local police departments to supplement their forces. They are often citizen volunteers, or they may be paid a minimal amount, but they generally are not full-time employees of police departments. According to the Department of State Police, there is no statewide training standard for reserve officers, though many local police agencies provide training for their reserves.

Part-time police officers. By contrast, according to the Department of State Police, part-time police officers are fully trained and certified police officers (certified by the Michigan Commission on Law Enforcement Standards [MCOLES]), who work less than full-time for a police department (or, they may work part-time for more than one police department).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no direct fiscal impact on state or local government. (5-22-02)

ARGUMENTS:**For:**

Several police departments in the state have appealed to the legislature for a change in the new concealed weapons law as it pertains to reserve police officers. Because reserve officers are not exempt from the CCW licensing requirements, and are subject to the restrictions on carrying concealed weapons on certain premises, including school grounds, bars, arenas, etc., it has become impossible for police departments to continue using these volunteers to assist them with security and crowd control functions at school and community events. It makes no sense to bar armed police officers from the named locations, as these are the very sites that are often in need of additional police presence. Without the use of reserve forces, many of whom are volunteers, police agencies across Michigan are facing severe manpower shortages and cannot afford to provide the level of public safety that their communities have come to expect. House Bills 6110 and 6111 will provide relief, by exempting reserve officers from the CCW licensing requirements and restrictions while they are on duty.

Against:

While House Bill 6110 is a reasonable approach to resolving the issues raised by the passage of Public Act 381, House Bill 6111 would go far beyond what is necessary to solve the problem. It would completely exempt reserve and part-time officers from the CCW licensing requirements, including the requirement to obtain firearm safety training, as well as prohibitions on possessing automatic weapons and transporting loaded weapons in a vehicle. While some local police departments provide training for their reserve officers, there is no statewide standard for training reserves, nor any requirement that they be trained. In fact, they should not be classified in the statute in the same category as “part-time” police officers, who are fully certified and trained police officers who are working less than full-time hours. If reserve officers are going to be carrying weapons (*especially* when acting as a police officer) they should indeed be required to obtain at least the safety training required of other citizens who apply for CCW licenses.

For:

House Bills 6108 and 6109 would exempt retired police officers from the requirement to take an eight-hour gun safety course in order to obtain a CCW license. Since these individuals have already undertaken extensive police training, including training in shooting and handling firearms, it is

ridiculous to require them to take the standard courses offered to untrained citizens. In fact, these retired officers are often among those instructing these courses!

Response:

Retired police officers should also be exempted from the restrictions on carrying weapons in restricted areas, including bars. These restrictions strike many as ludicrous, especially when one considers that many former police officers carry a weapon to protect themselves and their families from the many enemies they may have gained while serving their communities as law enforcement officers.

For:

House Bill 6113 would provide a narrow exemption for police officers from the CCW statute’s requirements regarding alcohol use while carrying a firearm. The exemption would apply only when an officer is not in uniform but is on duty (e.g., to an undercover or plain clothes officer), or to an officer who is not in uniform but required to carry his or her weapon. It has been pointed out that officers who are working undercover may need to consume some alcohol in order to play the role they are acting; the current statute puts these individuals in an untenable position. This change in policy would *not* suggest that the legislature condones police officers drinking while carrying a weapon; it would merely return this issue to the way it was traditionally handled before the passage of the CCW law – by police department policy. By doing that, an officer who acted irresponsibly would be dealt with through his or her employer’s disciplinary process, but would not be subject to a civil infraction for having a few drinks at a restaurant while off duty.

Against:

The CCW reform legislation was supported by many because it leveled the playing field for ordinary citizens, making the process of obtaining a permit much more democratic. It changed the process from one that benefited only favored classes of citizens (e.g., retired police officers) into a process where anyone meeting the stated requirements must be issued a permit. These bills would reinstate some of that “favored” treatment for certain classes of law enforcement personnel. It should be noted that if law enforcement feels hampered by the new rules, ordinary citizens also are inconvenienced. The restrictions should be lifted for ordinary law abiding citizens, not just law enforcement personnel.

POSITIONS:

The Michigan Association of Chiefs of Police supports the concept of the bills. (5-22-02)

The Livonia Department of Public Safety and the Livonia Public Schools submitted testimony in support of legislation to allow uniformed reserve police officers to be considered “peace officers” for purposes of CCW licensing. (5-21-02)

The following organizations indicated support for the bills (5-21-02 and 5-22-02):

- The Fraternal Order of Police
- The Michigan Sheriffs Association
- The Police Officers Association of Michigan

The Department of Attorney General supports House Bills 6108 and 6109. (5-22-02)

The Michigan State Troopers Association indicated support for House Bills 6108, 6109, and 6113. (5-22-02)

The Department of State Police is neutral on the bills. (5-22-02)

A representative of Brass Roots testified in opposition to the bills. (5-21-02)

Analyst: D. Martens

■ 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.