

HOUSE BILL No. 4308

February 21, 2013, Introduced by Reps. Shirkey, Franz, Poleski, Hooker, Lyons, McMillin and LaVoy and referred to the Committee on Judiciary.

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 sections 2 and 2a (MCL 28.422 and 28.422a), as amended by 2012 PA 377, and by adding section 12c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as otherwise provided in this act, a person
2 shall not purchase, carry, possess, or transport a pistol in this
3 state without first having obtained a license for the pistol as

1 prescribed in this section.

2 (2) A person who brings a pistol into this state who is on
3 leave from active duty with the armed forces of the United States
4 or who has been discharged from active duty with the armed forces
5 of the United States shall obtain a license for the pistol within
6 30 days after his or her arrival in this state.

7 (3) The commissioner or chief of police of a city, township,
8 or village police department that issues licenses to purchase,
9 carry, possess, or transport pistols, or his or her duly authorized
10 deputy, or the sheriff or his or her duly authorized deputy, in the
11 parts of a county not included within a city, township, or village
12 having an organized police department, in discharging the duty to
13 issue licenses shall with due speed and diligence issue licenses to
14 purchase, carry, possess, or transport pistols to qualified
15 applicants unless he or she has probable cause to believe that the
16 applicant would be a threat to himself or herself or to other
17 individuals, or would commit an offense with the pistol that would
18 violate a law of this or another state or of the United States. An
19 applicant is qualified if all of the following circumstances exist:

20 (a) The person is not subject to an order or disposition for
21 which he or she has received notice and an opportunity for a
22 hearing, and which was entered into the law enforcement information
23 network under any of the following:

24 (i) Section 464a of the mental health code, 1974 PA 258, MCL
25 330.1464a.

26 (ii) Section 5107 of the estates and protected individuals
27 code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA

1 642.

2 (iii) Section 2950 of the revised judicature act of 1961, 1961
3 PA 236, MCL 600.2950.

4 (iv) Section 2950a of the revised judicature act of 1961, 1961
5 PA 236, MCL 600.2950a.

6 (v) Section 14 of 1846 RS 84, MCL 552.14.

7 (vi) Section 6b of chapter V of the code of criminal procedure,
8 1927 PA 175, MCL 765.6b, if the order has a condition imposed under
9 section 6b(3) of chapter V of the code of criminal procedure, 1927
10 PA 175, MCL 765.6b.

11 (vii) Section 16b of chapter IX of the code of criminal
12 procedure, 1927 PA 175, MCL 769.16b.

13 (b) The person is 18 years of age or older or, if the seller
14 is licensed under 18 USC 923, is 21 years of age or older.

15 (c) The person is a citizen of the United States or an alien
16 lawfully admitted into the United States and is a legal resident of
17 this state. For the purposes of this section, a person ~~shall be~~ **IS**
18 considered a legal resident of this state if any of the following
19 apply:

20 (i) The person has a valid, lawfully obtained Michigan driver
21 license issued under the Michigan vehicle code, 1949 PA 300, MCL
22 257.1 to 257.923, or an official state personal identification card
23 issued under 1972 PA 222, MCL 28.291 to 28.300.

24 (ii) The person is lawfully registered to vote in this state.

25 (iii) The person is on active duty status with the United States
26 armed forces and is stationed outside of this state, but the
27 person's home of record is in this state.

1 (iv) The person is on active duty status with the United States
2 armed forces and is permanently stationed in this state, but the
3 person's home of record is in another state.

4 (d) A felony charge or a criminal charge listed in section 5b
5 against the person is not pending at the time of application.

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

10 (f) The person has not been adjudged insane in this state or
11 elsewhere unless he or she has been adjudged restored to sanity by
12 court order.

13 (g) The person is not under an order of involuntary commitment
14 in an inpatient or outpatient setting due to mental illness.

15 (h) The person has not been adjudged legally incapacitated in
16 this state or elsewhere. This subdivision does not apply to a
17 person who has had his or her legal capacity restored by order of
18 the court.

19 (4) Applications for licenses under this section shall be
20 signed by the applicant under oath upon forms provided by the
21 director of the department of state police. Licenses to purchase,
22 carry, possess, or transport pistols shall be executed in
23 ~~triplicate~~**DUPLICATE** upon forms provided by the director of the
24 department of state police and shall be signed by the licensing
25 authority. ~~Three~~**TWO** copies of the license shall be delivered to
26 the applicant by the licensing authority. A license is void unless
27 used within 30 days after the date it is issued.

1 (5) If an individual purchases or otherwise acquires a pistol,
2 the seller shall fill out the license forms describing the pistol,
3 together with the date of sale or acquisition, and sign his or her
4 name in ink indicating that the pistol was sold to or otherwise
5 acquired by the purchaser. The purchaser shall also sign his or her
6 name in ink indicating the purchase or other acquisition of the
7 pistol from the seller. The seller may retain a copy of the license
8 as a record of the transaction. The purchaser shall receive 2
9 ~~copies~~ **A COPY** of the license. ~~The purchaser shall return 1 copy of~~
10 ~~the license to the licensing authority within 10 days after the~~
11 ~~date the pistol is purchased or acquired. The return of the copy to~~
12 ~~the licensing authority may be made in person or may be made by~~
13 ~~first class mail or certified mail sent within the 10 day period to~~
14 ~~the proper address of the licensing authority. A purchaser who~~
15 ~~fails to comply with the requirements of this subsection is~~
16 ~~responsible for a state civil infraction and may be fined not more~~
17 ~~than \$250.00. If a purchaser is found responsible for a state civil~~
18 ~~infraction under this subsection, the court shall notify the~~
19 ~~department of state police of that determination.~~

20 ~~—— (6) Within 10 days after receiving the license copy returned~~
21 ~~under subsection (5), the licensing authority shall electronically~~
22 ~~enter the information into the pistol entry database as required by~~
23 ~~the department of state police if it has the ability to~~
24 ~~electronically enter that information. If the licensing authority~~
25 ~~does not have that ability, the licensing authority shall provide~~
26 ~~that information to the department of state police in a manner~~
27 ~~otherwise required by the department of state police. Any licensing~~

1 ~~authority that provided pistol descriptions to the department of~~
2 ~~state police under former section 9 of this act shall continue to~~
3 ~~provide pistol descriptions to the department of state police under~~
4 ~~this subsection. Within 48 hours after entering or otherwise~~
5 ~~providing the information on the license copy returned under~~
6 ~~subsection (5) to the department of state police, the licensing~~
7 ~~authority shall forward the copy of the license to the department~~
8 ~~of state police. The purchaser has the right to obtain a copy of~~
9 ~~the information placed in the pistol entry database under this~~
10 ~~subsection to verify the accuracy of that information. The~~
11 ~~licensing authority may charge a fee not to exceed \$1.00 for the~~
12 ~~cost of providing the copy. The licensee may carry, use, possess,~~
13 ~~and transport the pistol for 30 days beginning on the date of~~
14 ~~purchase or acquisition only while he or she is in possession of~~
15 ~~his or her copy of the license. However, the person is not required~~
16 ~~to have the license in his or her possession while carrying, using,~~
17 ~~possessing, or transporting the pistol after this period.~~

18 (6) ~~(7)~~ This section does not apply to the purchase of pistols
19 from wholesalers by dealers regularly engaged in the business of
20 selling pistols at retail, or to the sale, barter, or exchange of
21 pistols kept as relics or curios not made for modern ammunition or
22 permanently deactivated. This section does not prevent the transfer
23 of ownership of pistols that are inherited if ~~the license to~~
24 ~~purchase is approved by the commissioner or chief of police,~~
25 ~~sheriff, or their authorized deputies, and signed by the personal~~
26 ~~representative of the estate or by the next of kin having authority~~
27 ~~to dispose of the pistol.~~ **THE INDIVIDUAL WHO INHERITS THE PISTOL**

1 QUALIFIES FOR AND OBTAINS A LICENSE AS REQUIRED IN THIS SECTION AND
2 THE LICENSE IS SIGNED BY THE PERSONAL REPRESENTATIVE OF THE ESTATE
3 OR BY THE NEXT OF KIN HAVING AUTHORITY TO DISPOSE OF THE PISTOL,
4 INCLUDING SITUATIONS WHERE THE NEXT OF KIN IS THE INDIVIDUAL
5 INHERITING THE PISTOL. A PISTOL SHALL NOT BE SEIZED OR CONFISCATED
6 BY LAW ENFORCEMENT IF AN HEIR OR DEVISEE IS NOT QUALIFIED FOR A
7 LICENSE UNDER THIS SECTION, UNLESS THE ESTATE DOES NOT CHOOSE TO,
8 OR IS UNABLE TO, RETAIN POSSESSION OR FIND TEMPORARY ALTERNATIVE
9 STORAGE FOR THE PISTOL. A LAW ENFORCEMENT AGENCY SHALL NOT SELL,
10 DESTROY, OR OTHERWISE DISPOSE OF OR USE ANY PISTOL THAT IT OBTAINS
11 AS A RESULT OF NONQUALIFIED HEIRS OR DEVISEES UNTIL THE PISTOL
12 REMAINS UNCLAIMED IN THEIR POSSESSION FOR A PERIOD OF 1 YEAR. THIS
13 TIME FRAME DOES NOT APPLY, AND THE PISTOL MAY NOT BE SOLD,
14 DESTROYED, OR OTHERWISE DISPOSED OF, IF THE HEIR OR DEVISEE IS
15 UNDER 21 YEARS OF AGE OR IF ANY LEGAL ACTION REGARDING OWNERSHIP OF
16 THE PISTOL HAS BEEN FILED IN ANY COURT AND IS PENDING. AS USED IN
17 THIS SUBSECTION, "HEIR" MEANS THAT TERM AS DEFINED IN SECTION 1104
18 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
19 700.1104.

20 (7) ~~(8)~~—An individual who is not a resident of this state is
21 not required to obtain a license under this section if all of the
22 following conditions apply:

23 (a) The individual is licensed in his or her state of
24 residence to purchase, carry, or transport a pistol.

25 (b) The individual is in possession of the license described
26 in subdivision (a).

27 (c) The individual is the owner of the pistol he or she

1 possesses, carries, or transports.

2 (d) The individual possesses the pistol for a lawful purpose
3 as that term is defined in section 231a of the Michigan penal code,
4 1931 PA 328, MCL 750.231a.

5 (e) The individual is in this state for a period of 180 days
6 or less and does not intend to establish residency in this state.

7 ~~(8) (9)~~—An individual who is a nonresident of this state shall
8 present the license described in subsection ~~(8) (a)~~—**(7) (A)** upon the
9 demand of a police officer. An individual who violates this
10 subsection is guilty of a misdemeanor punishable by imprisonment
11 for not more than 90 days or a fine of not more than \$100.00, or
12 both.

13 ~~(9) (10)~~—The licensing authority may require a person claiming
14 active duty status with the United States armed forces to provide
15 proof of 1 or both of the following:

16 (a) The person's home of record.

17 (b) Permanent active duty assignment in this state.

18 ~~(10) (11)~~—This section does not apply to a person who is
19 younger than the age required under subsection (3) (b) and who
20 possesses a pistol if all of the following conditions apply:

21 (a) The person is not otherwise prohibited from possessing
22 that pistol.

23 (b) The person is at a recognized target range.

24 (c) The person possesses the pistol for the purpose of target
25 practice or instruction in the safe use of a pistol.

26 (d) The person's parent or guardian is physically present and
27 supervising the person.

1 (e) The owner of the pistol is physically present.

2 (11) ~~(12)~~—This section does not apply to a person who
3 possesses a pistol if all of the following conditions apply:

4 (a) The person is not otherwise prohibited from possessing a
5 pistol.

6 (b) The person is at a recognized target range or shooting
7 facility.

8 (c) The person possesses the pistol for the purpose of target
9 practice or instruction in the safe use of a pistol.

10 (d) The owner of the pistol is physically present and
11 supervising the use of the pistol.

12 (12) ~~(13)~~—A person who forges any matter on an application for
13 a license under this section is guilty of a felony ~~7~~—punishable by
14 imprisonment for not more than 4 years or a fine of not more than
15 \$2,000.00, or both.

16 (13) ~~(14)~~—A licensing authority shall implement this section
17 during all of the licensing authority's normal business hours and
18 shall set hours for implementation that allow an applicant to use
19 the license within the time period set forth in subsection (4).

20 Sec. 2a. (1) The following individuals are not required to
21 obtain a license under section 2 to purchase, carry, possess, use,
22 or transport a pistol:

23 (a) An individual licensed under section 5b.

24 (b) A federally licensed firearms dealer.

25 (c) An individual who purchases a pistol from a federally
26 licensed firearms dealer in compliance with 18 USC 922(t).

27 (2) If an individual described in subsection (1) purchases or

1 otherwise acquires a pistol, the seller shall complete a record in
2 ~~triplicate~~**DUPLICATE** on a form provided by the department of state
3 police. The record shall include the purchaser's concealed weapon
4 license number or, if the purchaser is a federally licensed
5 firearms dealer, his or her dealer license number. If the purchaser
6 is not licensed under section 5b and is not a federally licensed
7 firearms dealer, the record shall include the dealer license number
8 of the federally licensed firearms dealer who is selling the
9 pistol. The purchaser shall sign the record. The seller may retain
10 1 copy of the record. The purchaser shall receive ~~2 copies~~**A COPY**
11 of the record. ~~and forward 1 copy to the police department of the~~
12 ~~city, village, or township in which the purchaser resides, or, if~~
13 ~~the purchaser does not reside in a city, village, or township~~
14 ~~having a police department, to the county sheriff, within 10 days~~
15 ~~following the purchase or acquisition. The return of the copy to~~
16 ~~the police department or county sheriff may be made in person or~~
17 ~~may be made by first class mail or certified mail sent within the~~
18 ~~10 day period to the proper address of the police department or~~
19 ~~county sheriff. A purchaser who fails to comply with the~~
20 ~~requirements of this subsection is responsible for a state civil~~
21 ~~infraction and may be fined not more than \$250.00. If a purchaser~~
22 ~~is found responsible for a state civil infraction under this~~
23 ~~subsection, the court shall notify the department of state police.~~
24 ~~If the purchaser is licensed under section 5b, the court shall~~
25 ~~notify the licensing authority of that determination.~~
26 ~~—— (3) Within 10 days after receiving the record copy returned~~
27 ~~under subsection (2), the police department or county sheriff shall~~

1 ~~electronically enter the information into the pistol entry database~~
2 ~~as required by the department of state police if it has the ability~~
3 ~~to electronically enter that information. If the police department~~
4 ~~or county sheriff does not have that ability, the police department~~
5 ~~or county sheriff shall provide that information to the department~~
6 ~~of state police in a manner otherwise required by the department of~~
7 ~~state police. Any police department or county sheriff that provided~~
8 ~~pistol descriptions to the department of state police under former~~
9 ~~section 9 of this act shall continue to provide pistol descriptions~~
10 ~~to the department of state police under this subsection. Within 48~~
11 ~~hours after entering or otherwise providing the information on the~~
12 ~~record copy returned under subsection (2) to the department of~~
13 ~~state police, the police department or county sheriff shall forward~~
14 ~~the copy of the record to the department of state police. The~~
15 ~~purchaser has the right to obtain a copy of the information placed~~
16 ~~in the pistol entry database under this subsection to verify the~~
17 ~~accuracy of that information. The police department or county~~
18 ~~sheriff may charge a fee not to exceed \$1.00 for the cost of~~
19 ~~providing the copy. The purchaser may carry, use, possess, and~~
20 ~~transport the pistol for 30 days beginning on the date of purchase~~
21 ~~or acquisition only while he or she is in possession of his or her~~
22 ~~copy of the record. However, the person is not required to have the~~
23 ~~record in his or her possession while carrying, using, possessing,~~
24 ~~or transporting the pistol after this period.~~

25 (3) ~~(4)~~ This section does not apply to a person or entity
26 exempt under section ~~2(7)~~-2(6).

27 (4) ~~(5)~~ An individual who makes a material false statement on

1 a sales record under this section is guilty of a felony punishable
2 by imprisonment for not more than 4 years or a fine of not more
3 than \$2,500.00, or both.

4 (5) ~~(6)~~—The department of state police may promulgate rules to
5 implement this section.

6 (6) ~~(7)~~—As used in this section, "federally licensed firearms
7 dealer" means an individual who holds a type 01 dealer license
8 under 18 USC 923.

9 SEC. 12C. (1) A SELLER OR A FEDERALLY LICENSED FIREARMS DEALER
10 SHALL NOT DO ANY OF THE FOLLOWING:

11 (A) CREATE A VISIBLE REPRESENTATION OR A BIOMETRIC RECORD OF
12 AN INDIVIDUAL WHO IS PURCHASING A FIREARM OR AMMUNITION, EXCEPT FOR
13 A VISIBLE REPRESENTATION CREATED INCIDENTALLY TO THE ROUTINE USE OF
14 SURVEILLANCE CAMERAS.

15 (B) LINK A VISIBLE REPRESENTATION OF A FIREARM OR AMMUNITION
16 TRANSACTION TO AN INDIVIDUAL, EXCEPT AT THE REQUEST OF LAW
17 ENFORCEMENT OR PURSUANT TO A COURT ORDER.

18 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
19 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
20 A FINE OF NOT MORE THAN \$500.00, OR BOTH.