

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Reps. Opsommer, Agema, Bumstead, Cotter, Crawford, Damrow, Denby, Farrington, Forlini, Franz, Genetski, Glardon, Goike, Graves, Haines, Haveman, Heise, Hooker, Horn, Huuki, Jacobsen, Jenkins, Johnson, Knollenberg, Kowall, LaFontaine, Lane, LeBlanc, Lund, Lyons, MacGregor, MacMaster, Moss, Muxlow, Nesbitt, O'Brien, Outman, Pettalia, Poleski, Potvin, Pscholka, Rendon, Shaughnessy, Shirkey, Somerville, Tyler, Walsh and Yonker

ENROLLED HOUSE BILL No. 5225

AN ACT 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), section 2 as amended by 2010 PA 20 and section 2a as amended by 2010 PA 210; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

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

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

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

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network 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, or section 444a of former 1978 PA 642.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Within 10 days after receiving the license copy returned under subsection (5), the licensing authority shall electronically enter the information into the pistol entry database as required by the department of state police if it has the ability to electronically enter that information. If the licensing authority does not have that ability, the licensing authority shall provide that information to the department of state police in a manner otherwise required by the department of state police. Any licensing authority that provided pistol descriptions to the department of state police under former section 9 of this act shall continue to provide pistol descriptions to the department of state police under this subsection. Within 48 hours after entering or otherwise providing the information on the license copy returned under subsection (5) to the department of state police, the licensing authority shall forward the copy of the license to the department of state police. The purchaser has the right to obtain a copy of the information placed in the pistol entry database under this subsection to verify the accuracy of that information. The licensing authority may charge a fee not to exceed \$1.00 for the cost of providing the copy. The licensee may carry, use, possess, and transport the pistol for

30 days beginning on the date of purchase or acquisition only while he or she is in possession of his or her copy of the license. However, the person is not required to have the license in his or her possession while carrying, using, possessing, or transporting the pistol after this period.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated. This section does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.

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

- (a) The individual is licensed in his or her state of residence to purchase, carry, or transport a pistol.
- (b) The individual is in possession of the license described in subdivision (a).
- (c) The individual is the owner of the pistol he or she possesses, carries, or transports.

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

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

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

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

- (a) The person's home of record.
- (b) Permanent active duty assignment in this state.

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

- (a) The person is not otherwise prohibited from possessing that pistol.
- (b) The person is at a recognized target range.
- (c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.
- (d) The person's parent or guardian is physically present and supervising the person.
- (e) The owner of the pistol is physically present.

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

- (a) The person is not otherwise prohibited from possessing a pistol.
- (b) The person is at a recognized target range or shooting facility.
- (c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.
- (d) The owner of the pistol is physically present and supervising the use of the pistol.

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

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

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

- (a) An individual licensed under section 5b.
- (b) A federally licensed firearms dealer.
- (c) An individual who purchases a pistol from a federally licensed firearms dealer in compliance with 18 USC 922(t).

(2) If an individual described in subsection (1) purchases or otherwise acquires a pistol, the seller shall complete a record in triplicate on a form provided by the department of state police. The record shall include the purchaser's concealed weapon license number or, if the purchaser is a federally licensed firearms dealer, his or her dealer license number. If the purchaser is not licensed under section 5b and is not a federally licensed firearms dealer, the record shall include the dealer license number of the federally licensed firearms dealer who is selling the pistol. The purchaser shall sign the record. The seller may retain 1 copy of the record. The purchaser shall receive 2 copies of the record and

forward 1 copy to the police department of the city, village, or township in which the purchaser resides, or, if the purchaser does not reside in a city, village, or township having a police department, to the county sheriff, within 10 days following the purchase or acquisition. The return of the copy to the police department or county sheriff may be made in person or may be made by first-class mail or certified mail sent within the 10-day period to the proper address of the police department or county sheriff. A purchaser who fails to comply with the requirements of this subsection is responsible for a state civil infraction and may be fined not more than \$250.00. If a purchaser is found responsible for a state civil infraction under this subsection, the court shall notify the department of state police. If the purchaser is licensed under section 5b, the court shall notify the licensing authority of that determination.

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

(4) This section does not apply to a person or entity exempt under section 2(7).

(5) An individual who makes a material false statement on a sales record under this section 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.

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

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

Enacting section 1. Sections 9a, 9b, 9c, and 11 of 1927 PA 372, MCL 28.429a, 28.429b, 28.429c, and 28.431, are repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Public Act 377 Frequently Asked Questions

January 2, 2013

Q. If an individual gets a LTP in a jurisdiction other than where he/she resides, can the MSP copy be mailed to his/her local jurisdiction?

A. No, the statute requires it be returned to the issuing authority.

Q. Can a dealer refuse to sell a pistol to someone that does not have a LTP?

A. The statute is very specific that a person purchasing from an FFL dealer does not need a LTP.

Q. Does this mean a CPL holder purchasing from another individual now needs a LTP?

A. No, the exception to the LTP for an individual with a valid Michigan CPL is still in effect.

Q. Can a person with a FFL doing business as a pawn broker or licensed as a collector of curios and relics sell to an individual without a LTP?

A. No, for the purpose of this act, a FFL is defined as a type 01 dealer, which is a retail dealer.

Q. Are FFL dealers required to conduct a NICS check for all sales now?

A. Michigan LTP and CPL forms are still approved as NICS alternative forms. This does not prevent the dealer from conducting a NICS check on someone that has a LTP or CPL, if they choose.

Q. Can a pellet pistol be sold by a FFL dealer without conducting a NICS check?

A. Since a pellet pistol is not considered a firearm under federal law, NICS will not conduct the background check for the sale of this type of firearm. The amended MCL 28.422a makes an exemption from the LTP requirement for "an individual who purchases a pistol from a federally licensed firearms dealer in compliance with 18USC 922(t)." If there is no NICS check done by the dealer, the individual is not exempt. Therefore, he/she must obtain a LTP.

Q. Is a License to Purchase now valid for 30 days and also another 30 days to return it?

A. No, a License to Purchase is valid for 30 days, but the requirement to return it to the issuing agency within 10 days of purchase has not changed.

Q. Can an agency charge a fee for issuing a License to Purchase to someone that does not live in their jurisdiction and does not pay taxes to them?

A. No. MCL 123.1102 prohibits it.

Q. Can a waiting period for background checks be instituted if a LTP applicant does not live in the jurisdiction where he/she is applying?

A. No. MCL 123.1102 also prohibits enacting or enforcing any ordinance or regulation pertaining to, or regulating in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols ... except as otherwise provided by federal law or a law of this state. The agency is not required to issue the LTP immediately if more time is needed to complete a background check. If the policy of the department is to check local records for determining "probable cause" as allowed by statute, a check with another agency may delay the issuance.

Q. Is an individual purchasing from an FFL prohibited from getting a License to Purchase?

A. No. The statute says they are not required to get a License to Purchase if purchasing from an FFL. It doesn't say they can't.

Q. How can I tell what type an FFL dealer is?

A. Digits number 7 and 8 indicate the type of FFL. Additionally, an FFL dealer can be verified at www.atfonline.gov/fflezcheck.