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Senate Bill 76 (Substitute S-3 as passed by the Senate)
Senate Bills 77 and 78 (as passed by the Senate)
Sponsor: Senator Kevin Hertel (S.B. 76)
 Senator Jeremy Moss (S.B. 77)
 Senator Mary Cavanagh (S.B. 78)
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-18-23

INTRODUCTION

Together, the bills would require an individual to obtain a license before purchasing a firearm in the State. They would extend the current framework for pistol licensure in the State, including the necessary qualifications, the licensing process, and associated penalties and exemptions, to the licensure of a firearm. They also would exempt from the requirement to obtain a license for a firearm a firearm purchased or acquired before the bill's effective date and an individual purchasing a firearm, other than a pistol, who underwent a Federal National Instant Criminal Background Check (NIC) performed by a Federally licensed firearms dealer within five days of the purchase. Senate Bills 77 and 78 are tie-barred to Senate Bill 76.

FISCAL IMPACT

Senate Bill 76 (S-3) would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions. Senate Bills 77 and 78 would have no fiscal impact on State or local government.

BRIEF RATIONALE

Michigan law requires an individual to obtain a license before possessing a pistol, which in practice serves as a requirement to undergo a background check before that possession. This background check prevents people with disqualifying conditions, which include a previous felony charge or a court order for involuntary hospitalization related to mental health, from possessing a pistol. Some people believe that this requirement to obtain a license before possession should apply to firearms generally.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 76 (S-3) through 78 are similar to House Bills 4138 (H-1), 4142, and 4143, respectively, from the current Legislative Session. The House Bills passed the House and have been referred to the Senate Committee of the Whole.

MCL 28.421 et al. (S.B. 76)
750.223 & 750.232a (S.B. 77)
777.11b & 777.16m (S.B. 78)

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CONTENT

Senate Bill 76 (S-3) would amend the handgun licensure Act to do the following:

- **Prohibit an individual from purchasing or acquiring a firearm that was not a pistol in the State without first having obtained a license.**
- **Specify that the prohibition described above would not apply to the purchase or acquisition of a firearm that occurred before the bill's effective date.**
- **Apply qualifications that an individual must possess to apply for pistol licensure to the qualifications that an individual would have to possess for the proposed firearm licensure.**
- **Apply the exemptions, procedures, and penalties prescribed in the Act for pistol licensure to firearm licensure.**
- **Exempt from a requirement to obtain a firearm license an individual purchasing a firearm other than a pistol who had a Federal NIC performed on the individual by a Federally licensed firearms dealer within five days of the purchase.**
- **Modify certain circumstances under which an individual would not have to obtain a license to possess a pistol or firearm.**

Senate Bill 77 would amend the Michigan Penal Code to apply the penalties and fines for selling or obtaining a pistol without complying with the handgun licensure Act to the selling or obtaining of a firearm.

Senate Bill 78 would amend the Code of Criminal Procedure to apply the sentencing guidelines for committing forgery on a pistol license application or providing a false statement on a pistol sales record to a firearm license and sales record.

Senate Bill 76 (S-3)

Pistol License Requirement; Apply to Firearms

Generally, the handgun licensure Act prohibits an individual from purchasing, carrying, possessing, or transporting a pistol in the State without first having obtained a license for the pistol as prescribed by the Act. The bill would prohibit a person from purchasing or acquiring a firearm that was not a pistol in the State without first having obtained a license. The bill specifies that the prohibition would not apply to the purchase or acquisition of a firearm that occurred before the bill's effective date.

Unless otherwise specified, the provisions of the handgun licensure Act described in further detail below also would apply to a firearm.

(The Act defines "pistol" as a loaded or unloaded firearm that is 26 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals it as a firearm. "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.)

Licensing Qualifications

The Act specifies that an individual must meet the following qualifications to obtain a pistol license:

- The individual must not be subject to specified orders that have been entered into the Law Enforcement Information Network (LEIN).

- The individual must be a United States citizen or an alien lawfully admitted into the United States and residing as a legal resident.
- The individual must not have a pending felony charge or criminal charge listed in Section 5b of the Act at the time of the application.
- The individual must not be prohibited from possessing or distributing a firearm under Section 224f of the Penal Code.
- The individual must not be currently adjudged insane or legally incapacitated in the State or elsewhere and must not be under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

In addition to the qualifications above, the Act specifies that an individual must be 18 years of age or older, or if the seller is licensed under Federal law, the individual must be 21 years of age or older. Instead, the bill would require the individual to be 18 years of age or older, but if the firearm were a pistol and the seller were licensed under Federal law, the individual would have to be 21 year of age or older.

(The orders that an individual must not be subject to as described above are as follows:

- A court order for involuntary hospitalization under the Mental Health Code.
- A court order finding that an individual is legally incapacitated under the Estates and Protected Individuals Code.
- A court order for personal protection under the Revised Judicature Act.
- A court order for personal protection related to the annulment of a marriage or divorce under the Revised Statutes of 1846.
- A court order for the release of a defendant that imposes a condition that the defendant not purchase or possess a firearm under the Code of Criminal Procedure.
- A court order that the Department of State Police (MSP) enter into LEIN the disposition of a case in which the person charged with any offense is found not guilty by reason of insanity under the Code of Criminal Procedure.

Section 5b of the handgun licensure Act lists many criminal charges, and pending criminal charges, that disqualify an individual from acquiring a concealed pistol license (CPL), including charges associated with reckless or impaired vehicle operation, charges associated with possession of controlled substances, and charges associated with assault or domestic assault, among other charges. Section 224f of the Penal Code specifies reasons that prohibit a person from possessing or distributing a firearm for specified reasons, such as being convicted of a felony and having unpaid fines, unfinished imprisonment, or incomplete conditions of probation or parole, among other reasons.)

The Act defines "seller" as a person who sells or gives a pistol to another person. Under the bill, "seller" would mean a person who sells or gives a *firearm* to another person.

Licensing Procedure

Under the Act, a city, township, or village police department, or a county sheriff's office, is a licensing authority. A licensing authority must issue licenses to purchase, carry, possess, or transport pistols to qualified applicants with due speed and diligence, unless the authority has probable cause to believe that the applicant would be a threat to the applicant or to other individuals, or would commit an offense with the pistol. Licensing authorities must implement the Act during all of their normal business hours and must set hours for implementation that allow an applicant to use the license within the time period prescribed by the Act.

The Act requires a licensing authority to issue three copies of a license to the applicant and specifies that a license is void unless used within 30 days after the date it is issued. Once a

licensed individual acquires a pistol, the seller must fill out the license forms describing the pistol, together with the date of the acquisition, and the seller's name in ink. The seller may retain a copy of the license.

In addition to the process above, the Act requires the purchaser to return one copy of the license to the licensing authority within 10 days after the date the pistol is purchased. Under the bill, this provision would not apply to a firearm.

The Act defines "purchaser" as a person who receives a pistol from another person by purchase or gift. Under the bill, "purchaser" would mean a person who receives a *firearm* from another person by purchase or gift.

Licensing and Inheritance

The Act also requires an individual who has inherited a pistol to obtain a license as required by the Act with 30 days of taking possession of the pistol. If the heir or devisee is not qualified for a license, he or she may direct the next of kin or person authorized to dispose of property under the Estates and Protected Individuals Code to dispose of the pistol in any manner that is lawful. The person authorized to dispose of the pistol does not have to obtain a license under the handgun licensure Act.

The Act prohibits a law enforcement agency from seizing or confiscating a pistol being transferred by testamentary bequest or the laws of intestacy unless the heir or devisee does not qualify for licensure and the next of kin or person authorized to dispose of property is unable to retain temporary possession of the firearm or find alternative lawful storage. If a law enforcement agency seizes or confiscates a pistol in this manner, the heir or devisee who is not qualified to obtain a license under this section retains ownership interest in the pistol and, within 30 days of being notified of the seizure or confiscation, may file with a court of competent jurisdiction to direct the law enforcement agency to lawfully transfer or otherwise dispose of the pistol. The law enforcement agency may not destroy, sell, or use the pistol until these 30 days have passed.

Age and Use Exemptions

Under the Act, the requirement to obtain a license does not apply to an individual who is younger than the age required under the Act and who possesses a pistol under the following conditions:

- The individual is not otherwise prohibited from possessing that pistol.
- The individual is at a recognized target range.
- The individual possesses the pistol for the purpose of target practice or instruction in its safe use.
- The individual is in the physical presence and under the direct supervision of the individual's parent, guardian, or another individual who is 21 years of age or older and that meets specified requirements, such as the completion of a pistol safety training class.
- The owner of the pistol is physically present.

In addition, the bill would require the individual to not be otherwise prohibited from possessing that pistol, to possess the pistol for hunting purposes, and to follow all applicable hunting laws. This provision and the entire exemption described above would not apply to a firearm.

The Act specifies that the requirement to obtain a license for a pistol 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.

Other Exemptions

Under the Act, the following individuals are not required to obtain a license to purchase, carry, possess, use, or transport a pistol:

- An individual who has a CPL, except for an individual who has an emergency license issued by the Act or a receipt serving as a CPL.
- A Federally license firearms dealer.
- An individual currently employed as a police officer who is licensed or certified under the Michigan Commission on Law Enforcement Standards Act.

In addition, the Act specifies that an individual who purchases a pistol from a Federally licensed firearms dealer does not have to obtain a license. The bill would delete this exemption and include in the list of exempted individuals described above an individual purchasing a firearm other than a pistol who had a Federal NIC performed on the individual by a Federally licensed firearms dealer within five days of the purchase.

(Generally, Federal law requires Federal firearms dealers to initiate a background check on an individual before allowing that individual to purchase the firearm. According to the Federal Bureau of Investigation, Federal firearms licensees, such as gun shop owners and retailers, use the Federal NIC System to provide instant background checks at the point of sale.)

If an individual described above purchases or otherwise acquires a pistol, the seller must complete three copies of the record with specified information. If the purchaser is not an individual who has a CPL or an individual currently employed as a police officer and is not a Federally license firearms dealer, the record must include the dealer license number of the Federally licensed firearms dealer who is selling the pistol. Under the bill, in the circumstance described above, the record would have to include the dealer license number of the Federally licensed firearms dealer that performed the Federal national instant criminal background check.

The Act requires the purchaser to receive two copies of the record and forward one to the police department of the city, village, or township in which the purchaser resides, or the county sheriff if none of those apply. This must occur in 10 days following the purchase or acquisition. Under the bill, this requirement would apply only if the firearm were a pistol.

The Act allows the MSP to promulgate rules for the exemptions described above.

Penalties

The Act specifies that a person who forges any matter on an application for a license is guilty of a felony punishable by imprisonment for up to four years or a fine of not more than \$2,000, or both. A person who makes a materially false statement on a sales record is guilty of a felony punishable by imprisonment for up to four years or a fine of not more than \$2,500, or both.

LEIN & Licensure

The Act requires the MSP to notify an individual who is subject to an order or disposition described above (in the Qualifications section of this summary) of that order or disposition, specifically stating the individual may not obtain a license to purchase a pistol until the order

or disposition is removed from LEIN and that the individual may request a correction or expungement of inaccurate information. If an individual requests that an inaccuracy be corrected or that an entry be expunged, the MSP must conduct an investigation concerning the accuracy of the information contained in LEIN and either grant or deny the request within 30 days after a request is made. The Act allows for a hearing if the MSP denies the request.

Law Enforcement Sale or Trade

Under the Act, a law enforcement agency that seizes or otherwise possesses a firearm subject to disposal resulting from possession contrary to the Act may retain the firearm or part of the firearm for sale or trade to a Federally licensed firearm dealer or for official use by members of the seizing law enforcement agency who are employed as peace officers. The Act specifies that a law enforcement agency that sells or trades or retains any pistol as described above must complete a record of the transaction as required by the Act.

Senate Bill 77

The Penal Code specifies that a person who knowingly sells a pistol without complying with Section 2 of the handgun licensure Act is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$100, or both. In addition, except as otherwise provided, the Code specifies that a person who obtains a pistol in violation of Section 2 of the handgun licensure Act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100, or both. Under the bill, these penalties would apply to the sale or obtainment of a firearm, instead of a pistol.

(Senate Bill 76 (S-3) would amend Section 2 of the handgun licensure Act as described above.)

Senate Bill 78

Under the Code of Criminal Procedure, committing forgery on a pistol license application as prescribed by the handgun licensure Act is a Class F felony against a person with a statutory maximum sentence of four years' imprisonment. Providing a false statement on a pistol sales record as prescribed by the handgun licensure Act is a Class F felony against a person with a statutory maximum sentence of four years' imprisonment. Providing a false statement in a pistol application as prescribed by the Penal Code is a Class G felony against a person with a statutory maximum of four years' imprisonment. The bill would amend the description for these offenses to replace "pistol" with "firearm".

In addition, the bill would delete the following sentencing guidelines:

- A violation on a consumer fireworks certificate, which is a Class G felony against a person with a statutory maximum of two years' imprisonment.
- A student safety zone violation involving a work or loitering subsequent offense, which is a Class G felony against a person with a statutory maximum of two years' imprisonment.
- A student safety violation involving residency subsequent offense, which is a Class G felony against a person with a statutory maximum of two years' imprisonment.

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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.