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BILL ANALYSIS



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Senate Bill 442 (as introduced 9-9-15)
Sponsor: Senator Mike Green
Committee: Judiciary

Date Completed: 10-13-15

CONTENT

The bill would amend the handgun licensure law to do the following:

- **Specify that the prohibition against carrying a concealed pistol on certain premises (commonly called no-carry zones) would not apply to a person who applied for and was granted an exemption from that prohibition.**
- **Require an application for a concealed pistol license (CPL) to allow an applicant to designate whether he or she requested an indorsement exempting the licensee from the no-carry zone prohibition.**
- **Require a county clerk to issue an exemption indorsement within 10 days after receiving an application for exemption.**
- **Provide that there would be no additional fee for requesting an exemption indorsement at the time of an initial or renewal CPL application, but an applicant could be required to pay up to \$20 for an exemption indorsement requested at any other time.**
- **Allow an applicant for an exemption indorsement to appeal to the circuit court if a clerk failed to issue the exemption.**
- **Specify that the law's no-carry zone provisions, and exemptions from it, would not prevent a private property owner from prohibiting a person from carrying a pistol, including openly carrying it, on property included in a no-carry zone and enforcing that prohibition under the State's general trespass law.**
- **Prohibit a person who was licensed to carry a concealed pistol, or who was exempt from licensure, from intentionally displaying or openly carrying a pistol in a no-carry zone, except under certain circumstances.**

No-Carry Zone Exemption

The law prohibits a person who is licensed to carry a concealed pistol, or who is exempt from licensure, from carrying a concealed pistol or taser on the premises (excluding the parking areas) of any of the following (commonly called weapon-free or no-carry zones):

- A school or school property, except for a student's parent or legal guardian while in a vehicle on school property, if he or she is dropping off or picking up the student.
- A public or private child care center or day care center, child caring institution, or child placing agency.
- A sports arena or stadium.
- A licensed bar or tavern whose primary source of income is the sale of liquor by the glass for on-premises consumption.

- Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless its presiding official or officials permit the carrying of a concealed pistol on the property or facility.
- An entertainment facility with a seating capacity of 2,500 or more that the person knows or should know has such a seating capacity or that has a sign stating that capacity.
- A hospital.
- A dormitory or classroom of a community college, college, or university.

A violation is a State civil infraction punishable by a maximum fine of \$500, and a mandatory six-month suspension of the individual's license to carry a concealed pistol. A second violation is a misdemeanor punishable by a maximum fine of \$1,000, and revocation of the individual's license to carry a concealed pistol. A third or subsequent violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000, and license revocation.

The law lists individuals to whom the no-carry zone prohibition does not apply. Under the bill, the prohibition also would not apply to a person who applied for and was granted an exemption by the licensing authority. A person would be eligible for an exemption only if he or she requested an exemption on his or her license application.

Beginning December 1, 2015, the county clerk must indicate on a person's CPL if that person is exempt from the prohibition against carrying a concealed pistol in a no-carry zone, if the applicant provides acceptable proof that he or she qualifies for the exemption. (The law defines "acceptable proof" for various people exempted from the no-carry zone provision.)

Under the bill, beginning December 1, 2015, a CPL application would have to allow an applicant to designate whether he or she sought an exemption from the no-carry zone prohibition. The clerk would have to indicate on a CPL if the licensee was exempt from the no-carry zone prohibition if the applicant provided acceptable proof that he or she qualified for the exemption, or if the applicant requested an exemption indorsement on his or her license application.

Within 10 days after receiving an application for an exemption indorsement under the bill, a county clerk would have to issue the exemption and send a replacement license with the exemption indorsement to the applicant by first-class mail. If an applicant held a CPL at the time he or she was granted an exemption indorsement, the applicant would have to surrender his or her license to the licensing authority by mail or in person immediately upon receiving the replacement license.

A person who applied for and was granted an exemption from the no-carry zone prohibition at the time he or she applied for an original or renewal CPL would not have to pay any additional fee. An applicant who held a valid CPL and applied for an exemption at any other time, however, could be required to pay a fee of up to \$20 for both receiving and processing the application for the exemption and issuing a replacement license. The exemption would have to appear as an indorsement on the face of the license. Collected fees would have to be deposited into the county's concealed pistol licensing fund.

Failure to Issue Exemption Indorsement; Appeal

Under the Act, if the county clerk issues a notice of statutory disqualification for receiving a CPL, fails to provide a required receipt, or fails to issue a CPL, or if the State Police or other law enforcement agency fails to provide a required receipt, a CPL applicant may appeal to the circuit court. The appeal must be determined by a review of the record for error. For applications submitted after November 30, 2015, if the court determines that the notice or failure was clearly erroneous, the court may order the offending entity to refund any filing fees the applicant incurred in filing the appeal, according to the entity's degree of responsibility. If the court determines that the notice or failure was arbitrary and capricious,

the court must order the county clerk, law enforcement agency, or State to pay the applicant's actual costs and actual attorney fees in appealing the notice or failure.

Under the bill, those provisions also would apply to a county clerk's failure to provide an exemption from the no-carry zone prohibition.

Open-Carry Prohibition

The bill specifies that the no-carry zone provisions would not prohibit a private property owner from prohibiting a person from carrying a pistol, including one that was openly displayed or carried, on the premises of property included in a no-carry zone and enforcing that prohibition under Section 552 of the Michigan Penal Code. (That section prohibits a person from entering on the land or premises of another person without lawful authority, after being forbidden to do so; remaining on another's property after being notified to leave; or entering or remaining on another person's fenced or posted farm property without permission.)

A person who was licensed to carry a concealed pistol, or who was exempt from licensure, could not intentionally display or openly carry a pistol on the premises of property included in a no-carry zone except under either of the following conditions:

- The individual owned the premises or was employed or contracted by the owner or other person with control over the premises, if possession of the firearm were to provide security services for the premises or were otherwise in the scope of the individual's official duties.
- The individual was acting with the express written consent of the owner of the premises or the owner's agent.

MCL 28.425a et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would increase the responsibilities of county clerks related to concealed weapons licenses and would provide an option for additional revenue to pay for those costs. It would increase State costs by a minimal amount.

County clerks would be authorized to charge a fee of not more than \$20 that would cover both processing an application for a no-carry zone license indorsement and issuing a replacement license within 10 days if the application were submitted except with an application for an original or renewal concealed pistol license. The bill would require the deposit of any additional revenue collected due to the new fee in the county's concealed pistol licensing fund. Money in that fund may be used only for costs related to the administration of the handgun licensure law, including the staff costs of administering concealed weapons licenses, technology upgrades including fingerprint technology, supplies, and document storage and retrieval systems and upgrades. The cost and revenue associated with the proposal would depend on the volume of applications, the local decision to charge a fee of up to \$20 per application, and the level of the fee established.

The bill also would allow appeals to the circuit court of a county based on denial of an application for an exemption from the no-carry zone prohibition. If the county lost the appeal because the court found an error by the county, the court could order the refund of the appellant's filing fees. If the court found that the denial of the exemption was arbitrary and capricious, the court could order the county to pay costs and attorney fees for the appellant. This provision could increase the costs of courts and counties by an indeterminate but likely minimal amount, depending on the number and outcome of appeals.

The bill also could increase costs to courts, law enforcement, and jails if CPL holders, or individuals exempt from licensure, violated the proposed prohibition against intentionally

displaying or openly carrying a pistol on the premises of a no-carry zone, except as otherwise allowed. Any increase in fine revenue would benefit public libraries.

The bill would increase the costs of the Department of State Police, which would be required to change forms for applications for concealed pistol licensee to include the request for an exemption from the prohibition against carrying concealed pistols in no-carry zones. This form (part of the concealed pistol application kits required by MCL 28.425) would need to be updated and distributed electronically to county clerks by December 1, 2015. This one-time minimal cost likely would be absorbed within the Department's existing appropriations.

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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.