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Senate Bills 789 and 790 (as introduced 2-18-14)
Sponsor: Senator Mike Green
Committee: Judiciary

Date Completed: 3-4-14

CONTENT

Senate Bill 789 would amend the handgun licensure law to do the following:

- Eliminate county concealed weapon licensing boards and transfer their duties and functions to county clerks, effective January 1, 2015.
- Refer to a "licensing authority" rather than a concealed weapon licensing board.
- Reduce the timeline for processing an initial or renewal concealed pistol license (CPL) application.
- Authorize the Michigan Department of State Police (MSP) to investigate a CPL applicant.
- Require each county to establish a concealed pistol licensing fund for administration of the law.
- Require immediate reinstatement of a suspended CPL when the suspension period expired, and prescribe a maximum fee of \$10 for the reinstatement and return of a license.
- Revise provisions related to the appeal of a license denial.
- Revise requirements for the pistol safety training course required for a CPL.
- Require the county clerk to notify a licensee before his or her CPL expired.
- Revise the information that must be included in an annual report to the Legislature by the MSP.

The bill also would repeal a section allowing a concealed weapon licensing board to issue a license for the use of gas ejecting devices to protect premises, vehicles, people, and property from criminal assaults.

Senate Bill 790 would amend the Code of Criminal Procedure to revise citations to provisions of the handgun licensure law, reflecting changes proposed by Senate Bill 789.

Senate Bill 790 is tie-barred to Senate Bill 789.

A detailed description of Senate Bill 789 follows.

Transfer of Licensing Board Authority

The law requires each county to have a concealed weapon licensing board consisting of the county prosecuting attorney, the county sheriff, and the MSP Director, or the designee of any of those individuals. If a county prosecuting attorney chooses not to be a member, the county board of commissioners must appoint a replacement who is a firearms instructor and

meets prescribed qualifications. To obtain a CPL, an individual must apply to the concealed weapon licensing board in the county in which he or she lives.

Effective at midnight on December 31, 2014, the bill would eliminate the county concealed weapon licensing boards and transfer their duties, functions, and responsibilities to the county clerks. The bill would refer to a "licensing authority", rather than a concealed weapon licensing board, throughout the law. Through December 31, 2014, "licensing authority" would mean the concealed weapon licensing board in the county in which an applicant lives having the authority under the law to issue to the applicant a license to carry a concealed pistol. Beginning January 1, 2015, the term would mean the county clerk having the authority under the law to issue a CPL.

Each county licensing board would have to transfer all license applications and official documents in its possession to the clerk of the county in which the board was located by midnight on December 31, 2014. All pending applications would remain in place, and the licensing authority (the county clerk) would have to process them as provided in the law. The licensing authority could not charge any additional fee for receiving or processing an application submitted previously to the county board, except as otherwise provided in the law. A license to carry a concealed pistol issued by a county licensing board before that deadline would be valid and remain in effect until it expired or as otherwise provided by law.

License Application & Issuance

Evaluation & Investigation of Applicants. Under the law, the concealed weapon licensing board has exclusive authority to issue, deny, revoke, or suspend a CPL. The board may convene up to three panels to assist it in evaluating applicants. The bill provides that the authority of any panel convened under this provision would expire not later than midnight on December 31, 2014.

As part of the licensing process, a concealed weapon licensing board may investigate an applicant for licensure. The board may require the applicant to appear before it at a mutually agreed-upon time for a conference. The bill specifies instead that the MSP could investigate an applicant.

Application Info & Fees. The law requires the application for a CPL to contain specific information, including the names, addresses, and telephone numbers of two individuals who are references for the applicant. The bill would delete the requirement that the application include references.

The application also must include a passport-quality photograph provided by the applicant at the time of application. Under the bill, if the applicant did not provide the photograph, the application would have to include a photograph of the applicant taken by the licensing authority at no additional charge or for a reasonable fee. The licensing authority could not require the applicant to have his or her photograph taken by the authority or by any other specific office or vendor if the applicant provided his or her own photograph that complied with the photo requirement.

Also, the application would have to include the applicant's signature, obtained by the county clerk at the time of application for use on the applicant's CPL or as otherwise required.

The licensing authority could not require the applicant to submit any additional forms, documents, letters, or other evidence of eligibility for obtaining a CPL, except as required under the law. This would not prohibit a licensee from voluntarily submitting additional documentation if he or she chose to do so at his or her own initiative, nor would it prohibit the licensing authority from requiring an applicant in writing to provide additional

documentation that was necessary to address a specific disqualification set forth in the law and identified in a written notice sent to the applicant.

The law prescribes a nonrefundable application and licensing fee of \$105, payable to the county. Under the bill, that fee would be \$90. The bill would require the fee to cover all costs in the application and licensing process, through and including the denial or issuance of a license. No other charge, fee, cost, or assessment, including any local charge, fee, cost or assessment, would be required except as specifically authorized in the law.

Currently, the county treasurer must deposit \$41 of each fee in the county general fund, crediting \$26 to the county clerk and \$15 to the county sheriff. The county treasurer must forward the balance of the fee to the State Treasurer for deposit in the General Fund to the credit of the MSP. Under the bill, instead, \$26 of each application and licensing fee would have to be deposited in the proposed concealed pistol licensing fund and the remainder would have to be forwarded to the State Treasurer for deposit in the General Fund to the credit of the MSP.

Verification of Information. The law requires the county sheriff to verify that an applicant meets the law's requirements for a license through the Law Enforcement Information Network and report his or her finding to the board. Under the bill, this requirement would apply through December 31, 2014. Beginning on January 1, 2015, the MSP would have to conduct that verification.

If the applicant resides in a city, village, or township that has a police department, the licensing board must contact that police department to determine only whether it has any information relevant to the investigation of whether the applicant is eligible to receive a CPL. The bill would refer to the licensing authority rather than the board in this provision. Also, in all cases, the MSP would have to contact the county sheriff, the county prosecuting attorney, and the applicable MSP post to determine only whether those entities had any information relevant to the investigation of the applicant's eligibility for a CPL.

Fingerprinting. Under the law, after submitting an application and paying the required fee, an individual must request and have classifiable fingerprints taken by the county sheriff or a local police agency, if that police agency has fingerprinting capability. Under the bill, the applicant would have to request that classifiable fingerprints be taken by the county clerk, MSP, county sheriff, a local police agency, or other entity with fingerprinting capability.

If the individual requests that the fingerprints be taken by a local police agency, he or she also must pay a fee of \$15 to that police agency. The sheriff or police agency must take the fingerprints within five business days after the request. The bill would require the payment of that fee if the individual requested that classifiable fingerprints be taken by any of the entities mentioned above. The bill also would require those entities to provide reasonable access to fingerprinting services during normal business hours as necessary to comply with the fingerprinting requirements.

The law requires the fingerprints to be forwarded to the MSP for comparison with fingerprints already on file. The MSP must forward them to the Federal Bureau of Investigation (FBI). Within 10 days after receiving a report of the fingerprints from the FBI, the MSP must give a copy to the submitting agency and the appropriate clerk. The bill would reduce this time period to five business days and require the MSP to give a copy of the report to the submitting entity and to the appropriate licensing authority.

Except as otherwise provided, the concealed weapon licensing board may not issue a CPL until it receives the fingerprint comparison, and may deny a license if a person's fingerprints are not classifiable by the FBI. Under the bill, this would apply to the licensing authority,

which could deny a license if the fingerprints were not classifiable and a report could not be obtained based on the person's name, date of birth, and other identifying information.

Issuance or Denial of License. The law requires the concealed weapon licensing board to issue a license to a CPL applicant within a required period if the board determines that certain circumstances exist. Under the bill, the licensing authority would have to issue and send a license to an applicant within that required period.

One of the criteria that a licensing board must determine is that issuing a CPL to the applicant is not detrimental to the safety of the applicant or to any other individual. That determination must be based on clear and convincing evidence of repeated violations of the handgun licensure law, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the applicant's actions or statements that bear directly on his or her ability to carry a concealed pistol. The bill would delete this criterion.

Under the law, the licensing board must issue or deny a license within 45 days after receiving the fingerprint comparison report. The bill would require the licensing authority to issue or deny a license within 45 days after the date the applicant had classifiable fingerprints taken.

Temporary License. Currently, if the concealed weapon licensing board does not receive the fingerprint comparison report within 60 days after it is forwarded to the MSP, the board must issue a temporary license to an applicant who is otherwise qualified for a license. The bill would delete this provision. Instead, if a license were not granted or denied within 45 days after the date the applicant had classifiable fingerprints taken, the licensing authority would have to issue a temporary license by mail within five business days.

Currently, a temporary license is valid for 180 days or until the licensing board receives the fingerprint comparison report and issues or denies a license. Under the bill, a temporary license would be valid for 180 days after the date it was issued or until the licensing authority issued or denied the license, whichever occurred first. A temporary license would have to indicate on its face that it was temporary.

The law requires an applicant who received a temporary license to surrender it to the licensing board when a regular license is issued or denied. The bill would prohibit a licensing authority from charging a fee for issuing a license if the temporary license were surrendered as required.

Suspension or Revocation. Under the law, a concealed weapon licensing board that issued a CPL to an individual may revoke that license if it determines that he or she committed any violation of the handgun licensure law other than failing to have possession of his or her CPL when carrying a concealed pistol or failing to show his or her CPL and ID to a peace officer. If the board determines that the individual has been found responsible for three or more State civil infraction violations of the law during the license period, the board must conduct a hearing and may suspend the person's CPL for up to one year. Under the bill, the circuit court, not a licensing board, would have the authority to suspend or revoke a license under these circumstances.

If a concealed weapon licensing board suspends or revokes a license issued under the law, the license is forfeited and must be returned to the board. The bill would require a suspended or revoked license to be forfeited and returned to the licensing authority if the circuit court suspended or revoked it. A licensing authority would have to retain a suspended or revoked license as an official record one year after the license expired or, if the license were reinstated, the licensing authority could destroy the record.

Except as otherwise provided under the law, a license may not be revoked except upon written complaint and an opportunity for a hearing. The board must give the person at least 10 days' notice of a hearing. The bill would refer to suspension or revocation and would require the court to give the notice and conduct the hearing.

Under the law, if the concealed weapon licensing board determines by clear and convincing evidence based on specific articulable facts that the applicant poses a danger to himself or herself or to any other person, the board must immediately suspend the person's CPL pending a revocation hearing. The board must send the person notice of the suspension and inform him or her that he or she is entitled to a prompt hearing on the suspension. The bill would delete those provisions.

Under the bill, a suspension or revocation hearing would have to be closed to the public upon the request of the individual subject to it. He or she would be entitled to representation by legal counsel during the hearing and to present relevant evidence, including witness testimony, in his or her behalf. If a suspension were imposed, it would have to be for a period stated in years, months, or days, or until a specific date. The licensee promptly would have to surrender his or her license to the licensing authority after being notified that the license had been revoked or suspended.

If a circuit court ordered a license suspended, and the licensee surrendered that license, the licensing authority would have to automatically reinstate the license when the suspension period expired, if the license were suspended as required and not expired, and the individual were otherwise qualified to receive a CPL under the law. The licensing authority would have to notify the person of the reinstatement by first-class mail in a sealed envelope sent to his or her last known address as shown on the licensing authority's records. The notice would have to be sent within five business days after the licensing authority reinstated the license. A licensing authority could charge a fee of up to \$20 for the reinstatement of a revoked or suspended license. The clerk would have to collect any reinstatement fee paid for deposit in the concealed pistol licensing fund.

Delivery of License. The bill would require a county clerk issuing an initial, renewal, temporary, or replacement license to mail it to the licensee by first-class U.S. mail in a sealed envelope. A clerk issuing a reinstated license to an individual whose license was suspended, however, would have to mail it in this manner or provide the reinstated license to the individual in person upon the payment of a fee (as described above). This provision would not prohibit a licensing authority from issuing a replacement license in person at the time of application for a replacement license.

Immunity. The bill specifies that neither a licensing authority nor the MSP would be liable for civil damages as a result of the issuance of a license under the law to a person who later committed a crime or negligent act.

License Specifications. Beginning January 1, 2015, a CPL would have to be constructed of plastic laminated paper or hard plastic. No additional fee could be charged for the license unless otherwise prescribed under the law. A fee of up to \$10 could be charged for an optional hard plastic license, but only if the licensing authority also provided the option of obtaining a plastic laminated paper license at no charge.

Appeal of License Denial/Issuance Failure. Under the law, if the licensing board denies issuance of a license or fails to issue one as provided, the applicant may appeal to the circuit court. If the court determines that the denial or failure to issue a license was clearly erroneous, the court must order the board to issue a license as required by the law. The bill would refer to the licensing authority in these provisions. In addition, the bill would require the court to order issuance of a license if the court determined that the denial or failure to issue a license was arbitrary and capricious.

Currently, if the court determines that the board's decision was arbitrary and capricious, the court must order the State to pay one-third and the applicable county to pay two-thirds of the applicant's actual costs and attorney fees in appealing the denial. Under the bill, the court would have to order the licensing authority or the State to pay all of the applicant's actual costs and attorney fees in appealing, according to the licensing authority's or the State's degree of responsibility in the denial or failure to issue a license.

Under the law, if the court determines that an applicant's appeal was frivolous, the court must order the person to pay the actual costs and attorney fees of the concealed weapon licensing board in responding to the appeal. The bill would delete this provision.

Concealed Pistol Licensing Fund

The bill would require each county to establish a concealed pistol licensing fund for the deposit of fees collected under the law. The county treasurer would have to direct investment of the fund and credit to it any interest and earnings.

Money credited to the fund would have to be spent in compliance with the Uniform Budgeting and Accounting Act, subject to an appropriation. Fund expenditures could be used by the county clerk as the licensing authority only for the cost of administering the law. Allowable expenditures would include any of the following costs of the county clerk as the licensing authority:

- Staffing requirements.
- Technology upgrades, including technology to take fingerprints by electronic means.
- Office supplies.
- Document storage and retrieval systems and system upgrades.

MSP Annual Report

The law requires the MSP to file with the Secretary of the Senate and the Clerk of the House of Representatives an annual report setting forth specific information for each county licensing board. The information includes the number of CPLs revoked and categories for revocation. Under the bill, the report also would have to include the number of CPLs suspended and categories for suspension.

In addition, the report must include the number of charges of State civil infractions of the handgun licensure law or charges of criminal violations filed against licensed individuals that resulted in a finding of responsibility or a criminal conviction. The report must indicate the number of crimes in each category of criminal offense that involved the brandishing or use of a pistol, the number that involved the carrying of a pistol by the CPL holder during the commission of the crime, and the number in which no pistol was carried by the CPL holder during the commission of the crime. Under the bill, the report also would have to indicate the total number of people charged; the total number found responsible or convicted; and the total number of charges dismissed or individuals acquitted.

Pistol Training & Safety Program

In order to receive a CPL, an applicant must have had training in the safe use and handling of a pistol by the successful completion of a pistol safety training class that meets the law's requirements.

A pistol training and safety program meets the law's requirements only if it consists of at least eight hours of instruction and all of the following conditions are met:

- The program is certified by the State or a national or state firearms training organization and provides five hours of instruction in specific topics.
- The program provides at least three hours of instruction on a firing range and requires firing at least 30 rounds of ammunition.
- The program provides a certificate of completion that states that the program complies with the law's requirements and that the individual successfully completed the course, and that contains the printed name and signature of the course instructor.
- The instructor was certified by the state or a national organization to teach the courses.

The bill would require the training to have been provided within five years before the date of the CPL application. For certificates issued on or after January 1, 2015, all of the following information also would have to be printed on the face of each certificate or attached to it in a separate document:

- The instructor's name and address, and, if available, telephone number.
- The name and telephone number of the State agency or a state or national firearms training organization that certified the individual as an instructor, his or her instructor certification number, if any, and the expiration date of the certification.

The bill would prohibit the licensing authority from requiring any other instructor certification.

A training certificate that did not meet the requirements under State law applicable at the time the certification was issued could otherwise meet the requirements described above if the applicant provided information that reasonably demonstrated that the certificate or the training met the applicable requirements.

Carrying Under the Influence

The law prohibits an individual from carrying a concealed pistol while he or she is under the influence of alcoholic liquor or a controlled substance, or while he or she has a prohibited bodily alcohol content. The bill specifies that "under the influence of alcoholic liquor or a controlled substance" would mean that the individual's ability to properly handle a pistol or to exercise clear judgment regarding the use of that pistol was substantially and materially affected by the consumption of alcoholic liquor or a controlled substance.

License Expiration & Renewal

A CPL is valid until the applicant's date of birth that falls between four and five years after the license is issued or renewed, as applicable. The bill would require a licensing authority to notify the licensee that his or her license was about to expire and could be renewed. The licensing authority would have to send the notice to the licensee's last known address as shown on the clerk's records. The notification would have to be sent in a sealed envelope by first-class mail at least three months but not more than six months before the expiration date.

An applicant would be eligible for a license renewal if his or her license were not expired, or if it expired within five years before the date of application.

A license held by a licensee serving in the U.S. armed forces, the U.S. armed forces reserve, or the Michigan National Guard that expired while the licensee was on official assignment or deployment orders outside of Michigan or the continental United States would be automatically extended until 60 days after the end date of the assignment or orders. A licensee who received this extension would have to have his or her assignment or deployment orders in his or her possession while carrying a concealed pistol during the

extension period. The 60-day extension would not apply to a license to purchase, carry, possess, or transport a pistol under Section 2 of the law.

Currently, a licensing board must issue or deny issuance of a renewal license within 60 days after the application is properly submitted. If the board fails to deny or issue the renewal license by that deadline, the expiration date of the current license is extended by 180 days or until the renewal license is issued, whichever comes first. The bill would require the licensing authority to issue or deny issuance of a renewal license within 45 days after the date of application for renewal or, if required for renewal, within 45 days of the submission of classifiable fingerprints.

The law waives the educational requirements for an applicant for renewal, but requires the applicant to certify that he or she has completed at least three hours' review of the required training and has had at least one hour of firing range time within six months before applying. Under the bill, these educational and firing range requirements would be met if the applicant certified on the renewal application form that he or she had complied with them. The licensing authority could not otherwise require verification of these statements and could not require an applicant to obtain a certificate or undergo training other than as required in this provision.

Firearms Laws Compilation

The law requires the Legislative Service Bureau (LSB) to compile the State's firearms laws and provide copies to each concealed weapon licensing board for distribution. Under the bill, the LSB would have to provide copies to the MSP in an electronic format. The MSP would have to give a copy to each licensing authority in the State, together with information regarding the rights and responsibilities of applicants, license holders, and licensing authorities under the law. The MSP also would have to provide forms to appeal any denial, suspension, or revocation of a CPL. The MSP would have to distribute copies of the compilation, information, and forms in electronic format to each licensing authority.

Gas Ejecting Devices

The bill would repeal Section 6a, which allows a concealed weapon licensing board to issue to any bank, trust company, armored car company, railway company, express company, or other company, institution, copartnership, or individual in possession of large sums of money or other valuables, a license authorizing the licensee to equip its premises or vehicles with gas ejecting devices to be used solely to protect those premises or vehicles, and the people or property in them, from criminal assaults.

MCL 28.421 et al. (S.B. 789)
777.11b (S.B. 790)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 789

The bill would transfer the responsibilities of existing county concealed weapon licensing boards to county clerks and the MSP, resulting in additional costs for both entities.

Currently, a county clerk's responsibility under the handgun licensure law is only to serve as clerk to the concealed weapon licensing board in the county, but under the bill the clerk would assume all the duties, functions, and responsibilities of the board--with the exception of investigative responsibility--including the authority to issue to an applicant a license to carry a concealed pistol and the requirement to maintain all the concealed weapons applications and official documents. This new responsibility could result in significant

additional work load (and cost) for county clerk offices, depending upon the concealed weapon licensing activity of a county. Additional proposed responsibilities of the licensing authority, including notification of license holders of pending licensing expirations and a requirement for swifter action on license renewals, would contribute to the additional costs to counties, though to a degree that cannot be determined at this time.

The most significant fiscal impact on the MSP under the bill would result from the requirement that it assume the responsibility to investigate the background of each concealed weapon license applicant, a duty currently performed by the 249 members of county concealed weapon licensing boards throughout the State. The MSP suggests that this would require the dedication of a least one full-time investigative employee from each post--and in some areas, up to three--solely to conducting background investigations under the handgun licensure law. Overall, the MSP estimates that, with an average of two employees per 29 existing State Police posts at a cost of \$143,843 per employee, the Department would require 58.0 FTEs at a total cost of \$8.4 million annually to fulfill the requirement to check the background of CPL applicants. The annual number of applicants is estimated to be 90,000, but the number rose to 136,767 in 2013.

On the revenue side, the bill would lower the CPL application fee from \$105 to \$90. Currently, the revenue from the \$105 fee is distributed in the following way: \$26 to a county clerk; \$15 to a county sheriff; and \$64 to the MSP (with \$46.50 for the actual costs of fingerprint check analysis). Under the bill, the \$15 dedicated for the county sheriff would be removed and the \$26 would be deposited in a county concealed pistol licensing fund. While it is clear that the revenue credited to the MSP would fall short of the Department's estimated costs incurred under the bill, the degree to which the revenue credited to a local concealed pistol licensing fund would or would not offset the additional costs incurred by a county clerk's office is not known.

Senate Bill 790

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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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.