MICHIGAN RETIRED LAW ENFORCEMENT OFFICER'S FIREARM CARRY ACT

Act 537 of 2008

AN ACT to authorize a process for retired law enforcement officers to carry concealed firearms in this state; to prescribe certain powers and duties of the department of state police, the commission on law enforcement standards, and certain other state officers and agencies; to impose certain civil and criminal penalties; to impose certain requirements on certain persons issued certificates to carry concealed firearms; to provide for certain civil immunity; to allow for the collection of certain fees; to create certain funds; to provide for the forfeiture of firearms under certain circumstances; and to provide for the promulgation of rules.

History: 2008, Act 537, Eff. Mar. 31, 2009

The People of the State of Michigan enact:

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28.511 Short title.

Sec. 1.

This act shall be known and may be cited as the "Michigan retired law enforcement officer's firearm carry act".

History: 2008, Act 537, Eff. Mar. 31, 2009

28.512 Definitions.

Sec. 2.

As used in this act:

(a) "Active duty firearms standard" means the in-service standard for the training and qualification of active duty law enforcement officers as mandated by the commission under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

(b) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(c) "Certification" or "certified" means official recognition by the commission that a retired law enforcement officer has met the active duty firearms standard in this state and is eligible to carry a concealed firearm under 18 USC 926C.

(d) "Certificate" means a commission-issued document that identifies a qualified retired law enforcement officer who is certified under 18 USC 926C and this act.

(e) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(f) "Certificate holder" means a qualified retired law enforcement officer who is issued a certificate by the commission.

(g) "Commission" means the commission on law enforcement standards established under section 3 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(h) "Firearm" means that term as defined in section 1 of 1927 PA 372, MCL 28.421.

(i) "Peace officer" means an officer of a law enforcement agency of the state, the federal government, or a county, township, city, or village who is responsible for the prevention and

detection of crime and enforcement of the criminal laws of this state, and includes a motor carrier officer appointed under section 6d of 1935 PA 59, MCL 28.6d, and security personnel employed by the department of state police under section 6c of 1935 PA 59, MCL 28.6c. Peace officer does not include a qualified retired law enforcement officer.

(j) "Qualified retired law enforcement officer" means that term as defined in 18 USC 926C(c).

History: 2008, Act 537, Eff. Mar. 31, 2009

28.513 Certification of qualified retired law enforcement officer to carry concealed firearm; establishment of requirements and procedures by commission; rules.

Sec. 3.

The commission shall establish requirements and procedures through which a qualified retired law enforcement officer may be certified to carry a concealed firearm under 18 USC 926C and this act. The commission shall establish requirements and procedures through which certification under 18 USC 926C and this act may be denied or revoked. The commission may promulgate rules to implement this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2008, Act 537, Eff. Mar. 31, 2009

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28.514 Eligibility to carry concealed firearm.

Sec. 4.

(1) In order to be eligible to carry a concealed firearm under 18 USC 926C and this act, a qualified retired law enforcement officer must meet the requirements of 18 USC 926C and be a legal resident of this state.

(2) A retired law enforcement officer is not eligible for certification by the commission under 18 USC 926C and this act if he or she is prohibited under federal law from being certified under 18 USC 926C.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.515 Application requirements and procedures to verify identity; conduct criminal history, and conduct background investigation; establishment by commission.

Sec. 5.

(1) The commission shall establish application requirements and procedures in order to verify the identity of an applicant, to conduct a complete criminal history, and to conduct a background investigation into an applicant's fitness to carry a concealed firearm under 18 USC 926C and this act.

(2) The commission shall request the department of state police to conduct a criminal records check through the state of Michigan and the federal bureau of investigation. The commission shall require the individual to submit his or her fingerprints to the department of state police in a manner prescribed by the department of state police for that purpose. The department of state police may charge a fee for conducting the criminal records check. If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted under this section and stored in the AFIS

database, the department of state police shall notify the commission. Once the department of state police has a set of fingerprints on file as a result of being fingerprinted for purposes of this act, the individual is not required to have fingerprints taken for subsequent renewal applications.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.516 Application form; signature; providing false or misleading information as felony; penalty.

Sec. 6.

(1) The commission shall create an application form for certification under this act. The applicant shall sign the application acknowledging that all information contained in the application is true and accurate.

(2) An applicant who knowingly provides false or misleading information on the application, in whole or in part, 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.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.517 Issuance of certificate; carrying certificate and driver license or Michigan personal identification card; disclosure to peace officer; forfeiture upon notice of revocation; violation; penalties.

Sec. 7.

(1) The commission or its agent shall issue a certificate to a qualified retired law enforcement officer who has complied with the active duty firearms standard and is eligible to carry a concealed firearm under 18 USC 926C and this act.

(2) A certificate holder shall carry the certificate and a valid driver license or Michigan personal identification card on his or her person at all times while in possession of a concealed firearm and shall produce the documents upon demand by a peace officer.

(3) A certificate holder who is carrying a concealed firearm and who is stopped by a peace officer shall immediately disclose to the peace officer that he or she is carrying a concealed firearm on his or her person or is transporting a firearm in his or her vehicle.

(4) Upon notice of revocation, a certificate holder is required to forfeit his or her certificate to the commission by returning the certificate in person to the commission or returning the certificate by certified mail.

(5) A violation of this section subjects the certificate holder to the penalties provided in section 5f of 1927 PA 372, MCL 28.425f, including forfeiture of the firearm.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.518 Circumstances requiring report to commission; failure to file report as misdemeanor; penalty.

Sec. 8.

(1) A certificate holder shall immediately report to the commission in writing the circumstances of any of the following:

(a) An arrest or a conviction for a violation of any state or federal criminal law.

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(b) Becoming the subject of an order or disposition in any jurisdiction that does 1 or more of the following:

(i) Restrains the certificate holder from harassing, stalking, or threatening an intimate partner of the person or a child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

(ii) Prohibits or limits the transport, possession, carrying, or use of firearms or ammunition.

(iii) Involves an adjudication of mental illness, a finding of insanity, a finding of legal incapacity, or an order for involuntary commitment in an inpatient or outpatient setting.

(c) A laboratory result reflecting the unauthorized presence of controlled substances following a drug test administered to the certificate holder.

(2) A certificate holder who fails to file a written report as required under subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

History: 2008, Act 537, Eff. Mar. 31, 2009

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28.519 Implied consent to submit to chemical analysis; certificate holder under influence of alcoholic liquor or controlled substance; violation; penalty; exception; collection and testing of breath, blood, and urine specimens; refusal to take chemical test; report of violation to commission.

Sec. 9.

(1) Acceptance of a certificate issued under this act constitutes implied consent to submit to a chemical analysis under this section.

(2) A certificate holder shall not carry a concealed firearm while he or she is under the influence of alcoholic liquor or a controlled substance or while having a bodily alcohol content prohibited under this section. A person who violates this section is responsible for a state civil infraction or is guilty of a crime as follows:

(a) If the person was under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or had a bodily alcohol content of .10 or more grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. The court shall order the commission to permanently revoke the certificate. The commission shall permanently revoke the certificate as ordered by the court.

(b) If the person had a bodily alcohol content of .08 or more but less than .10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both. The court may order the commission to revoke the certificate for not more than 3 years. The commission shall revoke the certificate as ordered by the court.

(c) If the person had a bodily alcohol content of .02 or more, but less than .08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is responsible for a state civil infraction and may be fined not more than $100.00. The court may order the commission to revoke the certificate for 1 year. The commission shall revoke certification if an individual is found responsible for a subsequent violation of this subdivision.

(3) This section does not prohibit an individual certified under this act to carry a concealed firearm who has any bodily alcohol content from transporting that firearm in the locked trunk of his or her motor vehicle or another motor vehicle in which he or she is a passenger or, if the vehicle does not have a trunk, from transporting that firearm unloaded in a locked

compartment or container that is separated from the ammunition for that firearm or on a vessel if the firearm is transported unloaded in a locked compartment or container that is separated from the ammunition for that firearm.

(4) A peace officer who has probable cause to believe a certificate holder is carrying a concealed firearm in violation of this section may require the certificate holder to submit to a chemical analysis of his or her breath, blood, or urine.

(5) Before a certificate holder is required to submit to a chemical analysis under subsection (4), the peace officer shall inform the certificate holder of all of the following:

(a) The certificate holder may refuse to submit to the chemical analysis, but if he or she chooses to do so, all of the following apply:

(i) The officer may obtain a court order requiring the certificate holder to submit to a chemical analysis.

(ii) The refusal may result in his or her certificate being revoked.

(b) If the certificate holder submits to the chemical analysis, he or she may obtain a chemical analysis described in subsection (4) from a person of his or her own choosing.

(6) The collection and testing of breath, blood, and urine specimens under this section shall be conducted in the same manner that breath, blood, and urine specimens are collected and tested for alcohol-related and controlled-substance-related motor vehicle operation violations under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(7) If a certificate holder refuses to take a chemical test authorized under this section, the peace officer shall promptly report the refusal in writing to the commission.

(8) If a certificate holder takes a chemical test authorized under this section and the test results indicate that the individual had any bodily alcohol content while carrying a concealed firearm, the peace officer shall promptly report the violation in writing to the commission.

History: 2008, Act 537, Eff. Mar. 31, 2009

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28.520 Computerized database; creation and maintenance by commission; information to be contained; deletion; dissemination; confidentiality.

Sec. 10.

(1) The commission shall create and maintain a computerized database of individuals who apply for a certificate under this act. The database shall contain only the following information as to each individual:

(a) The individual's name, date of birth, address, and county of residence.

(b) If the individual is issued a certificate, the certificate number and date of expiration.

(c) Except as provided in subsection (2), if the individual was denied a certificate, a statement of the reasons for that denial.

(d) A statement of all criminal charges pending and criminal convictions obtained against the individual during the certificate period.

(e) A statement of all determinations of responsibility for civil infractions of this act pending or obtained against the individual during the certificate period.

(2) If an individual who was denied a certificate is subsequently issued a certificate, the commission shall delete from the computerized database the previous reasons for the denial.

(3) The commission shall provide the information described in subsection (1)(a) and (b) to the department of state police in a manner prescribed by the department of state police for dissemination through the law enforcement information network.

(4) Information in the database, compiled under subsections (1) through (3), is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to

15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.521 Administration of active duty firearm standard; identification of eligible public entities.

Sec. 11.

The commission shall identify public entities eligible to administer the active duty firearm standard to qualified retired law enforcement officers for purposes of carrying out 18 USC 926C and this act.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.522 Firearm subject to seizure and forfeiture.

Sec. 12.

A firearm that is carried in violation of this act is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709. This section does not apply if the violation is a state civil infraction under section 5f of 1927 PA 372, MCL 28.425f, unless the individual fails to present his or her certificate within the 45-day period described in that section.

History: 2008, Act 537, Eff. Mar. 31, 2009

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28.523 Retired law enforcement officer safety fund; creation in state treasury; credit of funds; balance remaining at end of fiscal year; administration for auditing purposes; expenditures.

Sec. 13.

(1) The retired law enforcement officer safety fund is created in the state treasury.

(2) The state treasurer shall credit to the fund deposits from the collection of application fees as provided in section 14. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) The unencumbered balance remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(4) The department of state police is the administrator of the fund for auditing purposes.

(5) The commission shall expend money from the fund, upon appropriation, only for the purposes of this act.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.524 Fees.

Sec. 14.

The commission may set and collect a fee for actual costs associated with administration under 18 USC 926C and this act by any method of payment accepted by the commission. The fees shall be deposited in the retired law enforcement officer safety fund.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.525 Immunity from liability.

Sec. 15.

The commission or any law enforcement agency, governmental entity, agent, employee, volunteer, designee, or individual who is acting in good faith in discharging his or her responsibilities under this act is immune from civil liability for any damages resulting from the ownership, possession, carrying, use, or discharge of a firearm by any qualified retired law enforcement officer who has been certified under this act or whose certification has been denied. The immunity provided under this section is in addition to any immunity otherwise provided by law.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.526 Preemption.

Sec. 16.

This act does not preempt any existing state or federal statute, regulation, or other authority governing the use, possession, carrying, or receiving of firearms or ammunition in this state, including application by a qualified retired law enforcement officer to carry a concealed firearm under 18 USC 926C.

History: 2008, Act 537, Eff. Mar. 31, 2009

28.527 Expiration of commission's authority to issue certificates.

Sec. 17.

The commission's authority to issue certificates under this act expires immediately upon the repeal of 18 USC 926C.

History: 2008, Act 537, Eff. Mar. 31, 2009

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