

Firearm Regulation

GLOSSARY

Automatic weapon

A firearm that can fire continuously until ammunition is exhausted or the trigger is released.

Firearm

Under Michigan law, rifles, shotguns, automatic weapons, pistols, pellet guns, and flare launchers are firearms; BB guns and blank cartridge pistols are not.

Handgun

A firearm that can be used with one hand; includes pistols.

Rifle

A firearm with a grooved bore; designed to be fired from the shoulder.

Semiautomatic weapon

A firearm that ejects the shell and loads the next ammunition round automatically after each shot has been fired; unlike an automatic weapon, the trigger must be pulled for each shot.

Shotgun

A smooth-bore firearm that fires shot over short ranges.

BACKGROUND

Michigan has several statutory restrictions affecting purchase, possession, and use of firearms.

- Rifles and shotguns may not be sold to persons aged under 18.
- Selling automatic weapons is prohibited.
- Pistols may be purchased only if a permit is granted by a local police agency.
- Selling armor-piercing ammunition (so-called cop-killer bullets) is prohibited.
- Selling or using hardware to convert a semiautomatic weapon to fully automatic is illegal.
- Possessing a gun in a bank, church, or school is prohibited unless one has a permit to carry a concealed weapon (CCW).
- Intentionally discharging a firearm from a motor vehicle, snowmobile, or off-road vehicle in a manner that endangers someone's safety is illegal.
- There are specific restrictions on carrying rifles and shotguns in cars and in Michigan forests and fields; the strictures are set out in the state's game laws and in legislation pertaining to improper use of dangerous weapons.
- Any person convicted of committing a crime with a firearm is subject to an additional penalty of two years in prison, without opportunity of early parole.

There also are a number of federal laws pertaining to firearms.

- Schools must expel students who possess a firearm on school property (including buses).
- Convicted felons, people judged mentally ill, or persons addicted to drugs are prohibited from owning, purchasing, receiving, or transporting firearms or ammunition.
- Selling automatic assault weapons is prohibited.
- Mail order sales of firearms by other than federally licensed dealers is prohibited.
- To legally buy and sell firearms and transport them in interstate commerce, one must possess a federal firearms license (in Michigan a sales tax license also is required).
- Selling and delivering handguns or handgun ammunition to anyone aged under 18 is prohibited.
- Persons aged under 18 are prohibited from possessing a handgun or handgun ammunition.

- Special, mandatory penalties are imposed for using firearms during drug-related crimes.

Another federal law—the Brady Handgun Violence Prevention Act of 1993—requires that prospective handgun purchasers' background be checked (to exclude felons and the mentally ill) and a five-day waiting period imposed to allow law enforcement officials time to conduct the check. Michigan and other states are exempt from the five-day waiting-period requirement because they already have an approval system in place that falls within the act's guidelines. The U.S. Supreme Court ruled 5-4 in June 1997 that it is unconstitutional for the federal government to *require* police to conduct the checks. The Supreme Court decision did not address the waiting period, but it did say that law enforcement authorities may *voluntarily* conduct a background check during the waiting period. The waiting-period requirement sunsets (expires) in late 1998, when a national, instant-check system must be in place (many observers expect that the system will not be fully complete by then, although the framework and some data will be on line); states that wish to maintain a waiting period after 1998 may do so.

Concealed Weapons

Most states, including Michigan, restrict who may carry certain weapons outside the home. Rifles and shotguns used for hunting may be carried only in a case in the car trunk. Michigan residents wishing to carry a pistol must apply to their county concealed weapons board for a CCW license (permit), providing general data and the reason(s) for needing or desiring it. Local concealed weapons boards, made up of the county prosecutor, county sheriff, and the state police director (or their designees), review applications and ascertain applicants' suitability for licensure. A majority vote of a board is required for license approval. A board may grant licenses for a period of up to three years and may place restrictions on a license as it deems necessary.

A board is prohibited from granting a CCW license to an applicant who (1) is aged under 18; (2) is not a U.S. citizen; (3) has not resided in the state for more than

six months; (4) has been convicted of a felony or confined for a felony conviction in Michigan or elsewhere during the preceding eight years; (5) is the subject of an order or disposition for involuntary mental hospitalization or legal incapacity; (6) is the subject of a personal protection order; (7) is on bail and prohibited from possessing a firearm; or (8) has been found not guilty of a crime by reason of insanity.

Generally, a CCW license is one of three types: (1) *target, range, and hunting*—allows a licensee to carry a pistol to and from a shooting site; (2) *home, bank, and business*—allows a licensee to carry a pistol during the course of employment; and (3) *general carry*—allows a licensee to carry a pistol with no or only minor restrictions. Licensees are subject to certain fees and rules. Boards may revoke licenses under certain conditions.

As of the end of 1997, nearly 49,000 Michigan residents had CCW permits, most of which are restricted (target/range/hunting and home/bank/business). A license to carry firearms issued in another state is honored by Michigan authorities.

Seven states completely prohibit carrying a concealed weapon. Thirteen (including Michigan) allow local law enforcement authorities to approve or deny an application for a CCW license; the action is based on the applicant's full record and, usually, whether need is demonstrated. Twenty-nine states issue a license to an individual who claims a lawful purpose, such as self-defense, unless s/he is in a prohibited category (i.e., convicted felon). Only in Vermont may one carry a concealed weapon without a license.

DISCUSSION

Some argue that Michigan laws regarding use and possession of firearms are not sufficiently tough. They point to the number of homicides committed annually with firearms, to the growing number of handguns appearing in schools, including at the elementary level, and to incidents of motorists being shot while driving on state roadways and people in their homes being shot from the street. (The years for which the following data are presented are the latest

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for which such information is available, and in some categories there are no Michigan-specific data.)

- In Michigan in 1996, 699 homicides were committed, 485 with firearms; 629 suicides and 6 accidental deaths involved a firearm.
- Nationwide in 1995, firearms were involved in 15,835 murders, 18,503 suicides, and another 1,225 fatal accidents.
- Nationally, in 1996 only 176 handgun homicides by private citizens were deemed “justified.”
- In 1994, firearms were the number-two killer of Americans aged 10–24, second only to motor-vehicle crashes, and firearm homicide was the leading cause of death for black males aged 15–34.
- In 1995, 203 Michigan youths aged 19 and under were killed with guns. Nationwide that year, an average of 14 children aged 19 and under were killed with guns daily.

Opponents of additional gun control point out that Michigan already has laws tougher than in most states. They argue that education in firearm operation and safety would be far more productive than more restrictive legislation and that firearm homicides usually are associated with other illegal activities, such as drug crimes.

Some opposed to statewide firearm regulation prefer to have local control over such matters. Supporters of statewide regulation argue that it makes both compliance and enforcement easier; varying—and potentially conflicting—local ordinances complicate enforcement and are harder for citizens and sports shooters to keep straight.

Insofar as handguns are concerned, those who oppose their being banned or their use restricted believe their position has constitutional support. Article I, section 6, of the Michigan Constitution says “Every person has a right to keep and bear arms for the defense of himself and the state.” This language is clearer than that in the Second Amendment to the U.S. Constitution, which says “A well-regulated militia being necessary to the security of a free state,

the right of the people to keep and bear arms shall not be infringed.” Many people believe that the Second Amendment is a restatement of a fundamental, individual right. According to the *Firearm Law Deskbook*,

Historically, the Second Amendment was adopted as an individual right so that people could maintain a balance with government, which the framers believed had the potential for oppression. Supreme Court jurisprudence is scant, but it seems established that militia arms are protected and that “the people” include individuals. However, in the last quarter of a century, some appellate courts have interpreted the Second Amendment to protect only a “collective” right of states to maintain militia, not an individual right.

Since the late 1980s, gun rights activists in several states have lobbied for more permissive CCW laws. Supporters of relaxing CCW laws want to make it easier for citizens to “keep and bear arms” and better protect themselves from violent acts. They charge that CCW boards have issued general permits primarily to retired police officers and other members of the law enforcement community.

Legislation (HBs 5551–59) to standardize Michigan’s CCW licensure requirements was introduced in February 1998 and is receiving bipartisan support. In general, it would give law enforcement authorities less discretion in deciding who may be licensed. The legislation would (1) require CCW applicants to disclose certain information but not the reason for wanting the license; (2) expand the concealed weapons boards to include two members of the general public; (3) raise the eligibility age to 21 and the residency requirement to more than one year; (4) specify the violent felony and violent misdemeanor convictions that would disqualify someone for life from licensure; (5) require documentation of knowledge or training in the safe use and handling of a pistol; (6) require that a board issue a license if the applicant meets all the criteria; (7) require that if the board denies a license, it must give the applicant a statement of facts supporting the denial and copies of any evidence supporting the decision; (8) change the li-

cense validity period from *up to* three years (board's discretion) to three years; and (9) prohibit licensees from having a blood alcohol level of .02 percent or more when carrying a pistol (violation will result in specific penalties that vary with the blood-alcohol level).

The legislation's supporters maintain that by not requiring a person to state a reason for wanting a license, simplifying the application process, limiting and clarifying the conditions under which a person may be denied licensure, requiring that licenses be valid for three years, and expanding the local concealed weapons boards to include two public members, a board's decision on who is licensed will be less arbitrary. They believe that if it is easier to obtain a gun permit, there will be less crime: With the increased likelihood that someone may be carrying a gun, criminals will be less likely to attempt a crime against that person. They also point out that public safety will be improved by the proposed requirements for handgun training and the prohibition on carrying a pistol when one's blood alcohol level is .02 percent or higher.

Others contend that the legislation does not go far enough in assuring people's right to bear arms. Some propose that there be no CCW restrictions at all (except for felons, who would not be allowed a license), as is the case in Vermont. Others would make licensure as uncomplicated as obtaining a driver's license; they would, however, deny the right to carry arms to convicted felons.

Opponents of the bills, many of whom are in law enforcement, prefer that CCW boards have greater discretion than the bills allow in determining who is licensed. As currently written, the bills stipulate that a CCW board *shall issue* (emphasis added) a license to an applicant if s/he meets the conditions of the legislation, thereby prohibiting a board from denying a license for any other reason.

Other legislation proposed for introduction in 1998 would allow immediate adult family members to use and possess a family member's registered handgun and require the Michigan Department of State Police to

auction (rather than destroy) the approximately 15,000 guns that come into their possession annually.

Although studies show that handgun owners possess them primarily for protection, any firearm in a home can increase the risk of death and injury to inhabitants or others if it is inappropriately stored or used. (The 1998 shooting of four girls and a teacher at an Arkansas middle school, allegedly by two other youngsters, has rekindled debate on firearm access.) In 1997, 15 states had so-called "safe storage" laws that hold adults liable when children are unintentionally injured or killed with improperly stored firearms. Such laws generally require adults either to store loaded firearms in a place that is reasonably inaccessible to children or use a device to lock the firearms. Supporters of having such a law in Michigan contend that it would increase public awareness about how to safely store firearms and also hold adults accountable for inappropriate storage, thereby reducing unintentional injuries and deaths. Opponents argue that such regulation is unnecessary, would constitute government intrusion into the home, and violates personal freedom.

In recent years a growing number of handguns have appeared in schools nationwide. In 1994 Michigan enacted a law requiring schools to expel students for possessing a weapon, including a firearm, on school property; as of December 1997 the penalty had been imposed on 96 students. Advocates of preventing gun violence support such efforts as educating students about reducing gun violence, helping teachers and schools to develop strategies to assure a gun-free environment, developing alternative education and support services for expelled students who might benefit from them and present no danger to others, and engaging parents in efforts to prevent gun violence.

FOR ADDITIONAL INFORMATION

Coalition to Stop Gun Violence
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Gunowners Action Information Network
P.O. Box 422
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Handgun Control, Inc.
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Michigan Association of Chiefs of Police
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Michigan Coalition of Responsible Gun Owners
P.O. Box 14014
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Michigan Department of State Police
714 South Harrison Road
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Michigan Partnership to Prevent Gun Violence
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[MRPA is the National Rifle Association affiliate in Michigan]

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