

# Firearms Regulation

## GLOSSARY

### Automatic weapon

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

### Concealed weapon

In Michigan, a firearm, either loaded or unloaded, that (1) is 30 inches or shorter or (2) by appearance or construction, does not look like a firearm.

### 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

Article 1, section 6, of the Michigan Constitution states that “Every person has a right to keep and bear arms for the defense of himself and the state,” and there has been relatively little legal debate over the intent or purpose of Michigan’s constitutional language. This is in sharp contrast to the diverse opinion about the meaning of the Second Amendment to the U.S. Constitution, (“... the right of the people to keep and bear arms, shall not be infringed”), but nevertheless, the issue of firearms regulation in Michigan has been the focus of heated debate in recent years.

Both federal and state law regulate the purchase and use of firearms. Federal law primarily focuses on the sale of firearms by licensed gun dealers. For example, federal law

- requires gun manufacturers, distributors, and dealers to hold a federal firearms license (FFL);
- prohibits FFL holders from selling a handgun to someone aged under 21 or a rifle or shotgun to someone aged under 18;
- prohibits the private sale of a handgun to someone aged under 18;
- prohibits importation of small, poor-quality handguns (so-called Saturday night specials) and some foreign assault weapons;
- prohibits production of certain assault weapons and magazines capable of holding more than 10 rounds of ammunition (however, it is not illegal to own or sell pre-1994 weapons and magazines);
- prohibits the manufacture, import, or sale of fully automatic machine guns (however, it is not illegal to own/sell pre-1986 weapons); and
- prohibits anyone aged under 18 from possessing a handgun or ammunition suitable only for a handgun; and
- prohibits certain categories of people—convicted felons, fugitives from justice, subjects of restraining orders, or those convicted of domestic violence—from possessing guns.

Compliance with the last provision listed above occurs through the FBI’s National Instant Check System (NICS). FFL holders are prohibited from selling any gun without performing the NICS background check. According to a February 2000 report by the Bureau of Alcohol, Tobacco and Firearms, the background-check system prevented purchases by prohibited persons about 180,000 times during its first year of operation (1999). The NICS system applies only to sales by FFL holders, however. A sale by any other person (e.g., unlicensed seller, individual owner) in any venue (e.g., garage sale, gun show, private residence) does not require a background check.

While federal law focuses on the sale of firearms by licensed dealers, Michigan laws regulate their sale, possession, and use by individuals. In Michigan,

- selling automatic weapons is prohibited;

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- rifles and shotguns may not be sold to someone aged under 18;
- selling armor-piercing ammunition is prohibited;
- selling or using hardware to convert a semiautomatic weapon to fully automatic is illegal;
- discharging a firearm from a vehicle is prohibited;
- handguns may be purchased only if a permit is granted by a local police agency and the applicant has passed a background check;
- anyone convicted of committing a crime with a firearm is subject to an additional penalty of two years in prison without opportunity of early parole;
- schools must expel students who possess a weapon, including a firearm, on school property;
- discharging a firearm within a public right-of-way, in cemeteries, or on farm property without the consent of the farm's owner is prohibited; and
- carrying a firearm while under the influence of a controlled substance or alcohol is prohibited.

Michigan's firearm laws are relatively strict: In March 2000, the Open Society Institute (New York) published "Gun Control in the United States: A Comparative Survey of State Gun Laws," ranking the 50 states on the stringency of their laws concerning ownership, possession, sale, and transfer of guns. Michigan ranks 14th among the 50 states in the strictness of its gun laws. Using a scale on which 0 equates to consistency with federal law, negative numbers indicate more leniency than federal law, and positive numbers indicate more strictness than federal law, Michigan scores 15. Massachusetts is most strict, with a score of 76, and Maine most lenient, with a score of -10. The national average is 9.

Of the 669 murders committed in Michigan in 2000, firearms were used in 474: handguns in 231, rifles in 19, and shotguns in 24 (the remainder were not classified by firearm type). By age of victim, 258 were 25-39, 174 were 17-24, and 40 were 16 and younger. By race of victim, 185 were Caucasian, 463 were African-American, and two were of Asian or Pacific descent (the remainder were not identified by race).

### Michigan's New Concealed-Weapons Laws

In July 2001 Michigan law regarding the acquisition of a license to carry a concealed weapon (CCW) underwent a dramatic change. A concealed weapon, as defined by Michigan law, is a (1) loaded or unloaded firearm that is 30 inches or shorter or (2) a firearm that looks like something other than what it is (e.g., a pen or camera).

Under the former CCW laws, county licensing boards comprising a representative of the sheriff, prosecutor, and state police decided whether an applicant could obtain a CCW license, and the applicant had to prove that s/he was qualified and needed to carry a concealed weapon. Licensing boards were prohibited from issuing licenses to several types of applicants—youth aged under 18, non-U.S. citizens, convicted felons, and others. Acceptable reasons for needing to carry a concealed weapon varied from county to county. Some boards granted many CCW licenses, while others issued very few. If one was turned down for a CCW, there was little right of appeal.

The legislative intent of Michigan's new CCW laws is to

create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining licenses to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol. It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial.

The old statute, because of the local discretion permitted, was known as a "may issue" law. The new statute, which requires a county licensing board to issue a permit unless it can show that the applicant is *not* eligible, is known as a "shall issue" law.

The new laws outline the basic requirements for CCW license eligibility. Applicants must

- be aged 21 or older;
- be a U.S. citizen or legal alien and a Michigan resident for six months;
- not be prohibited under the Michigan Penal Code from having a firearm;
- never have been convicted of a felony in Michigan or elsewhere and have no felony charges pending;
- not have been dishonorably discharged from the U.S. armed forces;
- not have been convicted of a misdemeanor violation for certain offenses for eight years prior to application;
- not have been convicted of any misdemeanor for three years prior to application;

- never have been cleared of a crime due to a plea of insanity;
- never have been involuntarily committed for mental illness; and
- be in a sound mental state when applying.

Finally, it must be clear to the county board that issuing the license will not endanger the safety of any person; a decision to deny a license for this reason must be based on

. . . clear and convincing evidence of civil infractions, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant's ability to carry a concealed pistol.

Two additional provisions of the new laws (1) require that two sets of fingerprints must be submitted by the applicant, one for the State Police and the other for the FBI, and (2) designate certain areas as "pistol free." The latter include

- schools and school property (unless the carrier is a parent or legal guardian dropping off or picking up a student);
- daycare centers and child-care agencies;
- sports arenas and stadiums;
- customer areas of businesses licensed under the state liquor control code (unless the carrier is an owner or employee);
- places of worship (unless the presiding official allows concealed weapons);
- entertainment facilities with a seating capacity of 2,500 or more;
- hospitals;
- college or university classrooms and dormitories;
- casinos; and
- airports (added in 2002).

In addition, all applicants for a CCW license must complete a certified pistol safety-training course that offers at least eight hours of instruction, including three hours on a firing range.

**DISCUSSION**

There are two groups of opponents to Michigan's new CCW laws. One argues that the laws are too tough, that there is no evidence that restrictions on concealed weap-

ons will reduce crime, and that the new restrictions on where concealed weapons may be carried is a step backward. They also assert that the fingerprinting requirement is a step toward national registration of firearms, which they vehemently oppose.

The other group fears that Michigan's being a shall-issue state means that the number of pistols in circulation and being carried will increase dramatically. They point out that in Wayne County alone, from 1990 to 1998, 5,264 youngsters aged under 17 were charged with carrying a concealed weapon. They are afraid that with CCW permits being more easily obtained, such statistics will worsen in the years ahead. They also contend that removing local discretion in issuing permits means that local circumstances cannot be taken into account.

Supporters of the new laws believe that they provide much-needed uniformity in granting licenses, impose important restrictions on where concealed weapons may be carried, and improve security by raising the minimum age, from 18 to 21, for obtaining a permit.

There also are dramatic differences of opinion on other firearm-related issues.

- In 1990 Michigan enacted a law prohibiting cities or other jurisdictions from bringing legal action against gun manufacturers or distributors for death or injury resulting from a firearm. Such litigation has been brought by cities in some other states. The law was vigorously opposed by gun-control advocates and vigorously supported by gun-control opponents.
- Michigan is one of 40 states that prohibits or restricts municipalities from enacting local gun legislation that is more restrictive than the state's. Opponents argue that local units of government should have the authority to impose tougher standards than the state if necessitated by local circumstances or the desires of the residents. Supporters believe that law-abiding gun owners should be able to travel anywhere in the state without being in danger of violating local law.
- Four states—California, Maryland, South Carolina, Virginia—have a "one-gun-a-month" law, meaning that a person may buy no more than one handgun a month. The intent is to prevent illegal gun traffickers from buying and reselling multiple handguns. Proponents of such a law in Michigan argue that it would cut down on the trafficking of illegal handguns. Opponents argue that law-abiding gun purchasers should not be restricted in the number of purchases they are permitted.

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- Finally, four states—California, Connecticut, Hawaii, Massachusetts—require guns in the home to be kept locked or unloaded. Proponents of such a measure for Michigan (Senate Bill 538) believe that “safe storage” requirements would dramatically reduce firearm accidents, particularly involving children. Opponents argue that such regulation is unnecessary and constitutes government intrusion into the home, violating personal freedom.

See also Crime and Corrections.

## FOR ADDITIONAL INFORMATION

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(202) 371-9615 FAX  
[www.bradycampaign.org](http://www.bradycampaign.org)

Coalition to Stop Gun Violence  
1000 16th Street, N.W., Suite 603  
Washington, DC 20036  
(202) 408-0061  
(202) 408-0062 FAX  
[www.gunfree.org](http://www.gunfree.org)

Michigan Coalition of Responsible Gun Owners  
P.O. Box 14014  
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[www.mcrgo.org](http://www.mcrgo.org)

Michigan Partnership to Prevent Gun Violence  
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Michigan Rifle and Pistol Association  
P.O. Box 1802  
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Michigan State Police  
714 South Harrison Road  
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Michigan United Conservation Clubs  
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