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LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION
Legal Training Section
(517) 322-6704

***The following is excerpts from P.A. 381 of 2000 that changed requirements for CCW license holders*.**

Requirements when stopping CCW license holder:

A CCW license holder in possession of a pistol must disclose to a peace officer when "stopped" that he or she possesses a concealed pistol on his or her person or in his or her vehicle. Failure to do so:

1st offense = Civil infraction, MCL 28.425f(5)(a)
2nd offense = Civil infraction, MCL 28.425f(5)(b)

Failure to possess CCW license when carrying a concealed pistol = State Civil Infraction.
MCL 28.425f(1)

Failure to display CCW license and Michigan drivers license or Michigan personal identification card when carrying a concealed pistol = State Civil Infraction. MCL 28.425f(2)

A person with a CCW license may <u>NOT</u> carry a pistol in a CCW free zones which includes:

- Schools property, except parent or legal guardian who is "dropping off or picking child up" and pistol is kept in the vehicle.
- Public or private day care center.
- Sports arena or stadium.
- Dining room, lounge, or bar area of a premises licensed under Liquor Control Code, <u>but</u> does not apply to owner or employee.
- Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, <u>unless</u> authorized by the presiding official.
- A hospital.
- A casino.
- A dormitory or classroom of a community college, college, or university.
- An entertainment facility with a seating capacity of 2,500 or more.

For violations (police <u>may</u> seize the weapon):
1st - state civil infraction, MCL 28.425o(3)a
2nd - 90-day misdemeanor, MCL 28.425o(3)b
3rd - 4-year felony, MCL 28.425o(3)c

Carrying "while under the influence": (MCL - 28.425k)

Acceptance of a CCW license constitutes "implied consent" to submit to a chemical test for violations of this law. A peace officer who has probable cause to believe an individual is carrying a concealed pistol in violation of this law may require a chemical test of breath, blood, or urine. The collection of a chemical test sample shall be conducted in the same manner as driving violations under the OUIL/OUID law.

If the person "refuses" the chemical test, the peace officer shall report the refusal to the CCW board. If the person takes the chemical test and the results prove any bodily content, the peace officer shall report the results to the CCW board.

A person is <u>not</u> in violation of this section if he or she has bodily alcohol content and is a passenger in a vehicle and the pistol is locked up in a container in the trunk. If there is no trunk, the pistol must be unloaded and locked in a container and separated from the ammunition.

For violations (police <u>may</u> seize the weapon):
- .02 -.079, State civil infraction, MCL 28.425k(2)c
- .08 -.099, 93 day misdemeanor, MCL 28.425k(2)b
- .10 or more, 93 day misdemeanor, MCL 28.425k(2)a

Seizure of Pistols – MCL 28.425(g)

A concealed pistol may be seized for ANY violation of the CCW statute except,

The weapon should not be seized if the CCW license holder is not in possession of his/her CCW license but is in possession of his/her driver's license or Michigan personal identification card, and the peace officer can verify through LEIN the existence of a valid CCW license. If the officer cannot verify the existence of a license, the pistol may be seized. The person than has 45 days to produce his license, otherwise the pistol may be forfeited.

Notice of Suspension – MCL 28.428

The CCW board may suspend or revoke a CCW permit. That information shall immediately be placed in LEIN.

If an officer locates an individual who has not received notice of a suspension, the officer should inform the person of the suspension and give them an opportunity to comply. The officer shall immediately enter into LEIN that notice was given.

Impersonating an FIA worker– MCL 750.217e (PA 22 of 2001) effective - September 1, 2001

An individual who is not employed by FIA shall not inform another individual or represent to another individual by identification or any other means that he or she is employed by FIA with the intent to do 1 or more of the following:

- Gain or attempt to gain entry into a residence, building, structure, facility, or other property.
- Remain or attempt to remain in or upon a residence, building, structure facility, or other property.
- Gain or attempt to gain access to financial account information.
- Commit or attempt to commit a crime.
- Obtain or attempt to obtain information to which the person is not entitled to under child protection laws.
- Gain access or attempt to gain access to a person less than 18 years of age or a vulnerable adult.

Penalty = 2 year felony

Assault upon FIA workers – MCL 750.81c
P.A. 22 of 2001 (effective September 1, 2001)

A person who communicates to any person a threat that he or she will physically harm an individual who is an employee of the family independent agency and who does so because of the individual's status as an employee of that agency is guilty of a 1 year misdemeanor.

A person who assaults or assaults and batters an individual while the individual is performing his or her duties as an employee of FIA or because of the individual status as an employee of FIA and causes:

Physical injury = 2 year felony.
Serious impairment of bodily function = 5 year felony.

Lacking knowledge of drug amount is no defense for a delivery charge, but may be a defense for a conspiracy charge

Defendant was convicted as an aider and abettor in the delivery of 225 grams or more but less than 650 grams of cocaine as well as with conspiracy to commit delivery of the same amount of cocaine. In both charges he argued that he did not know he was dealing with 225 grams or more. The Michigan Supreme Court held the following:

"A defendant may be properly convicted of **delivery** of 225 grams or more but less than 650 grams of cocaine on an aiding and abetting theory, even if he does not know the amount of drugs to be delivered, as long as the jury finds that at least 225 grams of cocaine were delivered."

"A defendant charged with **conspiracy to deliver** 225 grams or more but less than 650 grams of cocaine is entitled to have the jury instructed that the defendant is guilty only if the prosecution has proved beyond a reasonable doubt that defendant conspired to deliver, not just some amount of cocaine, but at least 225 grams of cocaine." People v Mass, MSC No. 115820 (July 5, 2001)