



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
1155 Brewery Park Boulevard, Suite 300
Detroit, Michigan 48207-2602

DEC 20 2001

OPEN LETTER TO THE MICHIGAN STATE POLICE AND ALL CONCERNED PERSONS

On July 1, 2001, a new Michigan law prohibited the issuance of a Concealed Pistol Permit (CCW) to anyone convicted of a felony offense. Michigan House Bill 4530, Act 381, Public Acts of 2000. As described below, under the new CCW provision, a felon convicted under Michigan law generally will be subject to Federal firearms prohibitions under the Gun Control Act (GCA).

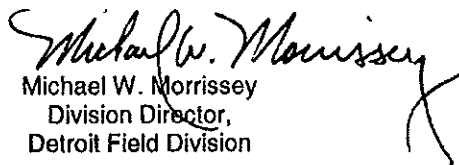
As you know, the GCA generally prohibits convicted felons from shipping, transporting, possessing, or receiving firearms in interstate commerce. Convicted felons are not subject to the Federal firearms prohibition, however, if they: (1) receive a full restoration of civil rights, and (2) are not subject to any state firearms restrictions, such as a CCW restriction. Conversely, if a felon is subject to a state CCW restriction, then he or she generally is subject to the Federal firearms prohibition. See 18 U.S.C. §§ 921(a)(20), 922(g)(1); see also attached, Open Letter, March 20, 2000 (explaining Federal prohibitions and restrictions in the context of Michigan state laws and federal court decisions). Accordingly, under the new CCW provision, whether a felon convicted under Michigan state law generally will be prohibited from possessing firearms under Federal law depends on the following circumstances.

Convicted on or after July 1, 2001: The felon is subject to the Federal firearms prohibition if the underlying felony conviction occurred on or after July 1, 2001. The felon is **NOT** relieved of this Federal disability by obtaining an expungement or set aside of the underlying conviction under Michigan law because the felon is still subject to the restriction under the new CCW law. In this situation, to avoid the Federal firearm prohibition, the felon must obtain a gubernatorial pardon.

- ◆ **Convicted prior to July 1, 2001:** The felon similarly is subject to the Federal prohibition if the underlying felony conviction occurred prior to July 1, 2001. In this case, to avoid the Federal firearm prohibition, prior to July 1, 2001, the felon must have completed all sentencing terms and conditions, and must have removed any and all firearms restrictions under the state's felon-in-possession and predecessor CCW provisions; **OR**, prior to July 1, 2001, the felon must have received a set aside or expungement. Alternatively, a felon who obtained a gubernatorial pardon will also avoid the Federal firearms prohibition.

It is important to note that if the underlying felony conviction occurred in another jurisdiction (either another state or in any Federal jurisdiction under Federal law) then the status of the convicted felon is determined by the law of that jurisdiction. Once again, we understand the concern this change may cause for your office and interested citizens of the State of Michigan, however we are obligated to comply with appropriate federal court decisions. If you have any further questions, please contact our Office of Division Counsel at (313) 259-7938.

Sincerely yours,


Michael W. Morrissey
Division Director,
Detroit Field Division

Attachment



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1155 Brewery Park Boulevard, Suite 300
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March 20, 2000

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This is to apprise you of the recent decision by the United States Sixth Circuit Court of Appeals in Hampton v. United States, 191 F. 3d 695 (6th Cir. 1999). This decision affects whether certain Michigan felons are prohibited from receiving or possessing firearms under Federal law.

The Gun Control Act of 1968 ("GCA") makes it unlawful for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year to ship, transport, possess or receive a firearm. 18 U.S.C. § 922(g)(1). What constitutes a "conviction" for such a crime must be determined in accordance with the law of the jurisdiction in which the proceedings were held. 18 U.S.C. § 921(a)(20). Any conviction for which a person has received a pardon, expungement, or restoration of civil rights shall not be considered a conviction for GCA purposes, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms. Id.

A State restores a felon's civil rights for purposes of the GCA only if it allows him or her to vote, to hold public office, and to serve on a jury. Under Michigan law, a convicted felon is entitled to vote and hold public office once he or she is released from custody. Prior to the Hampton decision, the Sixth Circuit held in several cases that Michigan law did not restore the right to sit on a jury to Michigan felons upon completion of sentence. This line of cases was overturned by the Hampton decision, which held that Michigan law restores a felon's right to sit on a jury upon completion of his or her sentence.

Based on the Hampton decision, an individual who has been convicted of a felony in Michigan has his or her civil rights substantially restored upon completion of sentence. In determining whether the convicted felon still has Federal firearms disabilities, however, it is necessary to examine Michigan law to determine whether the felon is still subject to any restrictions on his or her firearms rights. In Caron v. United States, 524 U.S. 308; 118 S. Ct. 2007, 2012 (1998), the Supreme Court held that Federal law prohibited convicted felons whose civil rights had been restored from receiving or possessing firearms if State law imposed even a partial restriction on their firearms rights.

Michigan law places a convicted felon under two types of state firearms restrictions. The first restriction is under Mich. Comp. Laws Ann. § 750.224f, which prohibits a convicted felon from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving or distributing firearms. This restriction separates convicted felons into two categories; those convicted of specified felonies and those who are not. If the felony conviction

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categorized as a "specified felony", the felon is subject to this restriction for a period of five (5) years after he/she has met all conditions of sentence, i.e. released from prison, paid all fines, and completed all terms of probation and parole. Further, after this five (5) year period has expired the "specified felon" must also apply for and receive a restoration of his or her state firearms rights from the local concealed weapons licensing board (gun board). Mich. Comp. Laws Ann. § 750.224f(2)(b). A specified felony is defined under Mich. Comp. Laws Ann. § 750.224f(6) and includes crimes of violence against a person or property, burglaries (and breaking and entering) of occupied dwellings; drug offenses; offenses involving the possession or distribution of a firearm; offenses where there was the unlawful use of an explosive; and arson.


Mich. Comp. Laws Ann. § 750.224f creates a different restriction for felons convicted of "non-specified" felonies. A "non-specified" felon is subject to the same restrictions as those convicted of "specified felonies" but only for a period of three (3) years after completion of all conditions of sentence. Further, there is no requirement for a felon convicted of a "non-specified" felony to obtain a restoration of his or her state firearms right from the local gun board.

The second state law firearms restriction is imposed under Mich. Comp. Laws Ann. § 28.426(b) which provides that an application for a concealed weapons license cannot be approved if the applicant was convicted of a felony or confined for a felony in this state or elsewhere during the eight (8) years immediately preceding the date of his application. It is important to note that this restriction applies to all convicted felons across the board and does not categorize them based upon the type of felony conviction.

An individual who has been convicted of a felony in Michigan is still subject to Federal firearms disabilities after completion of his or her sentence if Michigan law places any restrictions on that felon's state firearms rights. Unless the convicted felon's firearms rights have been completely restored under State law he/she is subject to the Federal prohibition on receipt or possession of a firearm. Accordingly, if a convicted felon is subject to either of the firearms restrictions under Mich. Comp. Laws Ann. §§ 750.224f or 28.426 he or she is still subject to firearms disabilities under Federal law.

If you have any further questions, please contact our Office of Division Counsel at (313) 393-6000.

Sincerely yours,


Michael W. Morrissey
Division Director
Cold Division