

HOUSE BILL No. 4116

February 7, 1991, Introduced by Reps. Sikkema, Dalman, Middaugh, Gilmer, Martin, Jaye, DeLange, Sparks, Oxender, Pitoniak, Nye and London and referred to the Committee on Judiciary.

A bill to amend sections 224 and 224d of Act No. 328 of the Public Acts of 1931, entitled

"The Michigan penal code,"

section 224 as amended by Act No. 321 of the Public Acts of 1990 and section 224d as added by Act No. 346 of the Public Acts of 1980, being sections 750.224 and 750.224d of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 224 and 224d of Act No. 328 of the
2 Public Acts of 1931, section 224 as amended by Act No. 321 of the
3 Public Acts of 1990 and section 224d as added by Act No. 346 of
4 the Public Acts of 1980, being sections 750.224 and 750.224d of
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 224. (1) A person shall not manufacture, sell, offer
7 for sale, or possess ~~a~~ ANY OF THE FOLLOWING:

1 (A) A machine gun or firearm that shoots or is designed to
2 shoot automatically more than 1 shot without manual reloading, by
3 a single function of the trigger. ~~or a~~

4 (B) A muffler or silencer. ~~or a~~

5 (C) A bomb or bombshell. ~~or a~~

6 (D) A blackjack, slungshot, billy, metallic knuckles, sand
7 club, sand bag, or bludgeon. ~~or any type of~~

8 (E) A device, weapon, cartridge, container, or contrivance
9 designed to render a person ~~either~~ temporarily or permanently
10 disabled by the ejection, release, or emission of a gas or other
11 substance.

12 (2) A person who violates ~~this section~~ SUBSECTION (1) is
13 guilty of a felony, punishable by imprisonment for not more than
14 5 years, or a fine of not more than \$2,500.00, or both.

15 (3) ~~(2)~~ Subsection (1) does not apply to ~~a~~ ~~es~~ ANY OF THE
16 FOLLOWING:

17 (A) A SELF-DEFENSE SPRAY device as defined in section 224d.
18 ~~or to a~~

19 (B) A person manufacturing firearms, explosives, or muni-
20 tions of war by virtue of a contract with a department of the
21 government of the United States. ~~or to a~~

22 (C) A person licensed by the secretary of the treasury of
23 the United States or the secretary's delegate to manufacture,
24 sell, or possess a machine gun, or ~~the type of~~ A device,
25 weapon, cartridge, container, or contrivance ~~mentioned~~
26 DESCRIBED in subsection (1).

1 (4) ~~(3)~~ As used in this chapter, "muffler" or "silencer"
2 means ~~a~~ 1 OR MORE OF THE FOLLOWING:

3 (A) A device for muffling, silencing, or deadening the
4 report of a firearm. ~~, a~~

5 (B) A combination of parts, designed or redesigned, and
6 intended for use in assembling or fabricating a muffler or
7 silencer. ~~, or a~~

8 (C) A part, designed or redesigned, and intended only for
9 use in assembling or fabricating a muffler or silencer.

10 Sec. 224d. (1) As used in this section and section 224,
11 ~~"es device" means a device which is capable of carrying not more~~
12 ~~than 35 grams of any combination of active and inert ingredients~~
13 ~~and which ejects, releases, or emits orthochlorobenzalmalonit~~
14 ~~rile but which does not eject, release, or emit any other gas or~~
15 ~~substance which will either temporarily or permanently disable,~~
16 ~~incapacitate, injure, or harm a person with whom the gas or sub~~
17 ~~stance comes in contact.~~ "SELF-DEFENSE SPRAY DEVICE" MEANS A
18 DEVICE TO WHICH ALL OF THE FOLLOWING APPLY:

19 (A) THE DEVICE IS CAPABLE OF CARRYING NOT MORE THAN 35 GRAMS
20 OF ANY COMBINATION OF ACTIVE AND INERT INGREDIENTS.

21 (B) THE DEVICE EJECTS, RELEASES, OR EMITS 1 OF THE
22 FOLLOWING:

23 (i) ORTHOCHLORO BENZALMALONONITRILE.

24 (ii) A SOLUTION CONTAINING NOT MORE THAN 2% OLEORESIN
25 CAPSICUM.

26 (C) THE DEVICE DOES NOT EJECT, RELEASE, OR EMIT ANY GAS OR
27 SUBSTANCE THAT WILL TEMPORARILY OR PERMANENTLY DISABLE,

1 INCAPACITATE, INJURE, OR HARM A PERSON WITH WHOM THE GAS OR
2 SUBSTANCE COMES IN CONTACT, OTHER THAN THE SUBSTANCE DESCRIBED IN
3 SUBDIVISION (B)(i) OR (ii).

4 (2) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A
5 person who uses a ~~es~~ SELF-DEFENSE SPRAY device to eject,
6 release, or emit orthochlorobenzalmalononitrile OR OLEORESIN
7 CAPSICUM at another person is guilty of a misdemeanor, punishable
8 by imprisonment for not more than 2 years, or a fine of not more
9 than \$2,000.00, or both.

10 (3) If a person uses a ~~es~~ SELF-DEFENSE SPRAY device during
11 the commission of a crime to eject, release, or emit orthochloro-
12 benzalmalononitrile OR OLEORESIN CAPSICUM or threatens to use a
13 ~~es~~ SELF-DEFENSE SPRAY device during the commission of a crime
14 to temporarily or permanently disable another person, the judge
15 who imposes sentence upon a conviction for that crime shall con-
16 sider the defendant's use or threatened use of the ~~es~~
17 SELF-DEFENSE SPRAY device as a reason for enhancing the
18 sentence.

19 (4) A person shall not sell a ~~es~~ SELF-DEFENSE SPRAY device
20 to a minor. A person who violates this subsection is guilty of a
21 misdemeanor.

22 (5) Subsection (2) does not prohibit either of the
23 following:

24 (a) The reasonable use of a ~~es~~ SELF-DEFENSE SPRAY device by
25 a law enforcement officer in the performance of the law enforce-
26 ment officer's duty.

1 (b) The reasonable use of a ~~es~~ SELF-DEFENSE SPRAY device by
2 a person in the protection of a person or property under
3 circumstances which would justify ~~that~~ THE person's use of
4 physical force.

5 Section 2. This amendatory act shall not take effect unless
6 Senate Bill No. _____ or House Bill No. 4115 (request
7 no. 01242'91 a) of the 86th Legislature is enacted into law.