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SFA**BILL ANALYSIS**

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Senate Bill 502 (as enrolled)
Senate Bill 505 (as enrolled)
Sponsor: Senator Philip E. Hoffman
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 225 of 2001
PUBLIC ACT 24 of 2002

Date Completed: 4-16-02

RATIONALE

Federal laws and regulations prohibit possessing a dangerous weapon or an explosive or incendiary device when a person is entering an airport area or is on, or attempting to board, an aircraft that is in or intended for operation in air transportation. A person who knowingly and willfully violates Federal airport security requirements may be imprisoned for up to one year; if a violator intends to commit a felony, the offense is punishable by up to 10 years. Further, some Federal weapons violations at airports are punishable by up to 15 years' imprisonment. It was pointed out, however, that there was no similar prohibition in State law regarding possessing a weapon in an airport's sterile area (i.e., the area beyond a security checkpoint). Although someone possessing a weapon in an airport within Michigan may be prosecuted for a Federal offense, there was concern about the authority of State and local police to arrest a person for violating Federal law. Some people believe that State law should include a prohibition against, and criminal penalties for, possessing or transporting weapons in an airport's sterile area. (Please see **BACKGROUND** for further information on applicable Federal laws and regulations.)

CONTENT

Senate Bills 502 and 505 amended the Aeronautics Code and the Code of Criminal Procedure, respectively, to prohibit and provide penalties for possessing or carrying certain weapons in a "sterile area" of a "commercial airport" and to include a felony violation in the sentencing guidelines. Senate Bill 505 also includes in the sentencing

guidelines felony violations enacted by Public Act 35 of 2002 (Senate Bill 541), which amended the Aeronautics Code and will take effect on May 15, 2002. Senate Bill 502 defines "commercial airport" as any airport having regularly scheduled commercial flights to and from other destinations. "Sterile area" means that term as defined in the Code of Federal Regulations, i.e., an area to which access is controlled by the inspection of a person's property in accordance with an approved security program (14 CFR 107.1).

Senate Bill 505 was tie-barred to Senate Bill 502 and Senate Bill 541. Senate Bills 502 and 505 took effect on April 1, 2002.

Senate Bill 502

The bill prohibits possessing, carrying, or attempting to possess or carry any of the following in a sterile area of a commercial airport:

- A firearm.
- An explosive.
- A knife with a blade of any length.
- A razor, box cutter, or item with a similar blade.
- A dangerous weapon.

Except as specified below, a violation of the bill is a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

A violation is a felony punishable by up to 10 years' imprisonment, a maximum fine of \$10,000, or both, if an offender violates the bill while doing any of the following:

- Getting on or attempting to get on an aircraft.
- Placing, attempting to place, or attempting to have placed on an aircraft an item banned by the bill.
- Committing or attempting to commit a felony.

The bill states that it does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed while violating the bill. A term of imprisonment imposed under the bill may be served consecutively to any other term of imprisonment imposed for a violation of law arising out of the same transaction.

The bill does not apply to any of the following:

- A peace officer of a duly authorized police agency of this or another state, the United States, or a political subdivision of this or another state.
- An individual regularly employed by the Department of Corrections and authorized by the Director of the Department to possess or carry an item banned by the bill during the performance of his or her duties or while going to or returning from his or her duties.

- A member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard, while possessing or carrying an item banned by the bill in the line of duty.
- A member of the National Guard, Armed Forces Reserves, or other duly authorized military organization, while on duty or drill or while possessing or carrying an item banned by the bill for purposes of that military organization.
- Security personnel employed to enforce Federal regulations for access to a sterile area.
- A court officer, while engaged in his or her duties as authorized by a court.
- An airline or airport employee as authorized by his or her employer.

Senate Bill 505

The bill added to the sentencing guidelines the felony of possessing a weapon in a sterile area of a commercial airport, as enacted by Senate Bill 502. The offense is categorized as a Class D felony against the public safety, with a statutory maximum sentence of 10 years' imprisonment.

The bill also added felony violations enacted by Senate Bill 541, as shown in Table 1

Table 1

Violation	Felony Class	Crime Category	Stat. Max. Sentence
Failure to Comply w/ Aircraft Certification Requirements - 2nd Violation	G	Public Safety	2 Years
Failure to Comply w/ Aircraft Certification Requirements - 3rd or Subsequent Violation	F	Public Safety	4 Years
Conducting Flight Operations w/o Certificate	F	Public Safety	4 Years
Conducting Flight Operations w/o Certificate - 2nd Violation	E	Public Safety	5 Years
Conducting Flight Operations w/o Certificate - 3rd or Subsequent Violation	D	Public Safety	10 Years

MCL 259.80f (S.B. 502)
MCL 777.12 (S.B. 505)

BACKGROUND

Federal law requires that the Administrator of the Federal Aviation Administration (FAA) "prescribe regulations requiring the screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure..." (49 USC 44901). The FAA Administrator also is required to "prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy" (49 USC 44903).

The FAA regulations developed pursuant to those Federal laws require that each airport security program be designed, in part, to "prevent or deter the carriage aboard airplanes of any explosive, incendiary device or a deadly or dangerous weapon on or about each individual's person or accessible property...through screening by weapon-detecting procedures or facilities" (14 CFR 129.25). Federal law proscribes a person from knowingly and willfully entering an aircraft or an airport area that serves an air carrier in violation of the FAA security requirements. The law requires that an offender be fined, imprisoned for up to one year, or both. A violation with intent to commit a felony in the aircraft or airport area is a felony, subject to a fine, up to 10 years' imprisonment, or both (49 USC 46314).

Federal law also requires that an individual be fined, imprisoned for up to 10 years, or both, if the individual, while on or attempting to board an aircraft that is in, or intended for operation in, air transportation has on or about his or her person or property "a concealed dangerous weapon that is or would be accessible to the individual in flight" (49 USC 46505). The same penalty applies to an individual who "has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight" or who "has on or about the individual, or has placed, attempted to place, or attempted to have placed on that aircraft, an explosive or incendiary device". Further, that section of Federal law requires a person to be fined, imprisoned for up to 15 years, or both if he or

she violates any of those weapons prohibitions "willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life".

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The prohibitions and penalties in Senate Bill 502 essentially duplicate provisions of Federal law. Previously, no Michigan law prohibited an individual from carrying a weapon in an airport, even in the so-called "sterile area" beyond security checkpoints. Michigan's recently enacted concealed weapons licensing law provides some restrictions as to where licensees may carry a concealed weapon, but the list of areas where weapons are prohibited does not include airports or airplanes. Since only Federal law covered weapons' possession in airports, any violators technically had to be arrested by Federal authorities. If the offense was a felony, State and local law enforcement officers apparently might have been willing to step in and detain an offender (even without the authority to do so) until custody was transferred to Federal authorities for prosecution in Federal courts. Simply possessing a weapon in the sterile area of an airport, however, is a misdemeanor under Federal law, which meant that State and local officers could not make an arrest. Furthermore, U.S. prosecutors typically will not bring misdemeanor charges. Reportedly, although the U.S. Attorneys' Offices in Michigan are willing to pursue misdemeanor weapons' violations at airports, because of the recent terrorist attacks, they will do so only as a stopgap measure. Since State and local police may not arrest someone for a Federal misdemeanor, however, it was necessary to dispatch a Federal law enforcement officer, which can be quite time-consuming, especially in a rural area.

The bill alleviates this situation by prohibiting in State law the possession of weapons or various implements that could be used as weapons in the sterile area of a commercial airport. Violators, then, may be arrested by State and local law enforcement officers and prosecuted in Michigan's court system.

In addition, providing a clearer process for State and local enforcement of weapons' restrictions at airports also should help air passengers to feel safer and more comfortable in their travels and confident that airports will be free of dangerous weapons.

Response: The list of those exempt from Senate Bill 502 should include licensed private investigators. According to testimony before the Senate Judiciary Committee, there are approximately 1,500 private investigative agencies in Michigan and their investigators must be licensed by the Michigan State Police as well as licensed to carry a concealed weapon. These investigators often perform protection and surveillance duties for such people as business executives and celebrities, and they may need to accompany their clients past airport security checkpoints. They should be allowed to carry their weapons in those instances.

Opposing Argument

The bills may not be necessary. Federal law proscribes the possession of firearms, explosives, and dangerous weapons in airports and FAA regulations require commercial airports to implement security programs that include weapons' detection. Even though Michigan had no concurrent State law, the air transportation security program that the FAA Administrator must require of each airport operator must include a "law enforcement presence and capability...that is adequate to ensure the safety of passengers" (49 USC 44903). That section of Federal law also requires the FAA regulations to authorize the operator of an airport "to use the services of qualified State, local, and private law enforcement personnel".

Response: According to a Special Agent of the FBI, this issue was discussed by the U.S. Attorney's Office and the FAA, and they concluded that this section of Federal law does not change anything. In other words, FAA regulations cannot give State and local police authority that they do not already have.

Opposing Argument

The bills do not mirror Federal restrictions and penalties entirely. For instance, a knife with a blade of any length and a razor, box cutter, or item with a similar blade are not specifically mentioned in Federal law or FAA security regulations. Also, the Federal penalty of one year's imprisonment for a violation and 10 years' imprisonment if the violation is

committed with intent to commit a felony in an aircraft or airport area applies to any knowing and willful violation of entering an aircraft or airport area that serves an air carrier in violation of security requirements (49 USC 46314). Those penalties are not limited to weapons' violations. On the other hand, Federal law includes a heavier 10-year penalty for various weapons' violations at airports and allows up to 15 years' imprisonment if the violation is committed willfully and without regard for the safety of human life (49 USC 46505).

Response: Senate Bill 502 substantially duplicates Federal restrictions. Although Federal law and FAA regulations do not specifically mention knives with a blade of any length or box cutters and similar items, those types of items reportedly are now being banned from airport sterile areas under the general category of dangerous weapons. In the recent terrorist attacks on the World Trade Center and the Pentagon, the airplane hijackers apparently used box cutters and knife-like weapons to commandeer several airplanes. In light of those atrocities, knives and box cutters or similar items certainly should be banned from airport sterile areas under State law.

Opposing Argument

The bills may be too broad. Items may be banned, and therefore confiscated by law enforcement or security officials, if they resemble anything that could possibly be used as a weapon even though that is not their intended use. For instance, airport security officials at Detroit Metropolitan Wayne County Airport reportedly have confiscated small pocket knives, fingernail clippers, tweezers, and knitting needles. Both the Federal laws and regulations and Senate Bill 502 could be construed to criminalize possession of those types of innocuous implements beyond an airport security checkpoint.

Response: Under the Michigan Criminal Jury Instruction (CJI) regarding the definition of a dangerous weapon, which is based on tests established in case law, some items, such as guns or bombs, are dangerous weapons by their very nature. The CJI states, however, that other items "are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is

likely to cause serious physical injury or death, it is a dangerous weapon” (CJI2d 11.19). So, possession of an item like tweezers or knitting needles will not constitute a violation of the bill unless the item is used or intended for use in a way that is likely to cause serious injury or death.

Opposing Argument

Michigan recently loosened restrictions on obtaining a license to carry a concealed weapon (CCW). While that law includes specific locations where a CCW licensee may not carry a weapon, it does not include airports in that list. Senate Bill 502 circumvents the licensing law by limiting the movement of CCW licensees, and may put CCW licensees and others in danger if they face a situation like the ones associated with the terrorist attacks of September 11. So-called gun-free zones do not protect people, but place them in situations in which they are not properly equipped to protect themselves. Gun-free zones should be decreased, not expanded.

Response: On the contrary, airports should be added to the list of gun-free zones. The absence of airports from the list has contributed to the problem that the bill addresses, since the only offense for which a licensee previously could have been prosecuted was a Federal misdemeanor (unless the elements of a felony applied). The public policy in Michigan is to keep guns out of relatively innocuous venues such as churches, dormitories, and hospitals, as well as large public facilities including auditoriums and stadiums. In both cases, the gun-free zone involves a potentially crowded place and/or vulnerable individuals. It makes little sense, then, to allow concealed weapons at airports, especially after the September 11 attacks. Furthermore, anyone who has a legitimate need to carry a concealed weapon in an airport should be covered by the list of exceptions.

Opposing Argument

The issue of workplace safety should not be overlooked. If those who work on airplanes or in airports, or those whose work takes them into airports and on commercial flights, were allowed to be armed if properly licensed to carry a concealed weapon, those workplaces would be safer.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 502 and 505 will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders will be convicted of possessing or carrying a firearm; explosive; knife with blade of any length; razor, box cutter, or item with similar blade; or any dangerous weapon in a sterile area of a commercial airport.

Under the bills, an offender convicted of possessing, carrying, or attempting to possess or carry an item listed above in a sterile area of a commercial airport will receive a misdemeanor sentence of 0-12 months. Offenders convicted of a misdemeanor are subject to probation or incarceration in a local facility. Local units incur the cost of probation as well as the cost of incarceration, which vary depending on county between \$27 and \$65 per day.

Under the bills, an offender convicted of possessing or carrying any of the above items while getting on an airplane, while placing a prohibited item on an airplane, or while committing a felony, will be guilty of a Class D felony for which the minimum sentencing range is 0-6 months to 43-76 months. In the absence of data, if one assumes that 10 offenders a year will be convicted of this offense and receive the longest minimum sentence, given that the average annual cost of incarceration is \$25,000, the cost to the State will be \$1.6 million.

Senate Bill 505 also designates the crime classification of the offenses listed in Table 2. There are no data to indicate how many offenders will be convicted of the new offenses (created by Public Act 35 of 2002). If one offender is convicted of each crime, is sentenced to prison, and receives the longest allowable minimum sentence, it will cost the State \$410,400, given that the average annual cost of incarceration is \$25,000.

Table 2

Sentencing Guideline Minimum Ranges		
Offense	Class	Sentencing Guidelines Minimum Range (months)
Failure to Comply w/ Aircraft Certification Requirements – 2nd Violation	G	0-3 to 7-23
Failure to Comply w/ Aircraft Certification Requirements – 3rd or Subsequent Violation	F	0-3 to 17-30
Conducting Flight Operations w/o Certificate	F	0-3 to 17-30
Conducting Flight Operations w/o Certificate – 2nd Violation	E	0-3 to 24-38
Conducting Flight Operations w/o Certificate – 3rd or Subsequent Violation	D	0-6 to 43-76

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.