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SFA



BILL ANALYSIS

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Senate Bill 940 (as enrolled)

House Bill 5506 (as enrolled)

House Bill 5511 (as enrolled)

Sponsor: Senator Walter H. North (S.B. 940)

Representative Clarence E. Phillips (H.B. 5506)

Representative Laura M. Toy (H.B. 5511)

Senate Committee: Judiciary

House Committee: Criminal Justice

Date Completed: 1-27-03

PUBLIC ACT 116 of 2002

PUBLIC ACT 134 of 2002

PUBLIC ACT 140 of 2002

CONTENT

The bills amended Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code to revise the offense involving a vulnerable target, expand the definition of "vulnerable target", and prohibit the possession of fake bombs.

The effective date of the bills was April 22, 2002. House Bill 5511 and Senate Bill 940 were tie-barred to each other. A more detailed description of the bills follows.

Senate Bill 940 and House Bill 5511

Chapter 33 makes it a crime to manufacture, deliver, possess, transport, place, use, or release, for unlawful purpose, various explosive materials, bombs, or incendiary devices; a chemical irritant; a harmful chemical, biological, or radioactive substance; a foul or offensive substance; or a device used to release or spread these materials; or an imitation harmful substance or device.

If a violation of Chapter 33 is committed in or directed at a vulnerable target, the person is guilty of a separate felony punishable by imprisonment for up to 20 years. Previously, for this penalty to apply, the violation had to result in the death of another individual or serious impairment of a body function of another individual. House Bill 5511 eliminated that element of the offense.

Prior to the bills' enactment, "vulnerable target" included a child care or day care center; a health care facility or agency; a building or structure open to the general public; a place of religious worship; a school offering any grade K-12; or an institution of

higher education. The Senate bill added all of the following to this definition:

- A stadium.
- A transportation structure or facility open to the public, including a bridge, tunnel, public highway, or railroad.
- A vehicle, locomotive or railroad car, aircraft, or watercraft used to provide public transportation services or the commercial movement of goods.
- An airport.
- Port facilities.
- A public services provider, which is any of the following: a natural gas company subject to the jurisdiction of the Federal Energy Regulatory Commission; an electric, steam, gas, telephone, power, water, or pipeline company; or a nuclear reactor or nuclear waste storage facility.

The House bill further expanded the definition of "vulnerable target" to include the following:

- A petroleum refinery, storage facility, or pipeline.
- A building, structure, or other facility owned or operated by the Federal government, by this State, or by a political subdivision or any other instrumentality of this State or of a local unit of government.

Further, the bill allows a court imposing a sentence for a violation against a vulnerable target to order the prison term to be served consecutively to the term of imprisonment for the underlying violation. Previously, the Code required concurrent sentencing.

The bill also specifies that it does not prohibit an individual from being charged with,

convicted of, or punished for any other violation of law committed by that individual while violating this section of the Code.

House Bill 5506

Under Chapter 33, it is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$3,000 if a person, with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy another person, delivers, sends, transports, or places a device that is constructed to represent an explosive, incendiary device, or bomb, or that was presented as an explosive, incendiary device, or bomb. Under the bill, possession of such a device is also prohibited.

MCL 750.212a (S.B. 940)
750.204a (H.B. 5506)
750.212a (H.B. 5511)

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 940 and House Bill 5511

The bills will have an indeterminate effect on State and local governments.

According to the Department of Corrections Statistical Report, during the last five years for which data are available (1995-1999), no offenders were convicted of an explosives violation committed in or directed at a vulnerable target resulting in the death or serious impairment of a body function of an individual. By expanding the definition of a vulnerable target, the bills may increase the number of people convicted of this offense.

An offender convicted of an explosives offense against a vulnerable target is guilty of a felony punishable by imprisonment for not more than 20 years, which previously had to be served concurrently to the sentence for the underlying offense. The House bill may increase State costs by allowing the sentences to be served consecutively rather than concurrently.

House Bill 5506

To the extent that the bill increases the number of convicted offenders by including the possession of a device representing an explosive, it may result in increased costs to State government. An offender will receive probation or incarceration for up to five years and/or a fine of up to \$3,000. The State will incur the cost of felony probation, estimated to be \$4.38 per day, and incarceration at an annual cost of \$25,000. If one offender is convicted and receives the longest minimum sentence, it will cost the State \$83,300.

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.