

HOUSE BILL No. 4861

June 2, 2005, Introduced by Reps. Ball, Jones and Schuitmaker and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 224 and 224d (MCL 750.224 and 750.224d),
section 224 as amended by 1991 PA 33 and section 224d as amended by
1992 PA 4.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 224. (1) A person shall not manufacture, sell, offer for
2 sale, or possess any of the following:

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

6 (b) A muffler or silencer.

7 (c) A bomb or bombshell.

8 (d) A blackjack, slungshot, billy, metallic knuckles, sand

1 club, sand bag, or bludgeon.

2 (e) A device, weapon, cartridge, container, or contrivance
3 designed to render a person temporarily or permanently disabled by
4 the ejection, release, or emission of a gas or other substance.

5 (2) A person who violates subsection (1) is guilty of a
6 felony, punishable by imprisonment for not more than 5 years, or a
7 fine of not more than \$2,500.00, or both.

8 (3) Subsection (1) does not apply to any of the following:

9 (a) A self-defense spray **OR FOAM** device as defined in section
10 224d.

11 (b) A person manufacturing firearms, explosives, or munitions
12 of war by virtue of a contract with a department of the government
13 of the United States.

14 (c) A person licensed by the secretary of the treasury of the
15 United States or the secretary's delegate to manufacture, sell, or
16 possess a machine gun, or a device, weapon, cartridge, container,
17 or contrivance described in subsection (1).

18 (4) As used in this chapter, "muffler" or "silencer" means 1
19 or more of the following:

20 (a) A device for muffling, silencing, or deadening the report
21 of a firearm.

22 (b) A combination of parts, designed or redesigned, and
23 intended for use in assembling or fabricating a muffler or
24 silencer.

25 (c) A part, designed or redesigned, and intended only for use
26 in assembling or fabricating a muffler or silencer.

27 Sec. 224d. (1) As used in this section and section 224, "self-

1 defense spray **OR FOAM** device" means a device to which all of the
2 following apply:

3 (a) The device is capable of carrying, and ejects, releases,
4 or emits 1 of the following:

5 (i) Not more than 35 grams of any combination of
6 orthochlorobenzalmalononitrile and inert ingredients.

7 (ii) A solution containing ~~not more than 2%~~ **10%** oleoresin
8 capsicum.

9 (b) The device does not eject, release, or emit any gas or
10 substance that will temporarily or permanently disable,
11 incapacitate, injure, or harm a person with whom the gas or
12 substance comes in contact, other than the substance described in
13 subdivision (a)(i) or (ii).

14 (2) Except as otherwise provided in this section, a person who
15 uses a self-defense spray **OR FOAM** device to eject, release, or emit
16 orthochlorobenzalmalononitrile or oleoresin capsicum at another
17 person is guilty of a misdemeanor, punishable by imprisonment for
18 not more than 2 years, or a fine of not more than \$2,000.00, or
19 both.

20 (3) If a person uses a self-defense spray **OR FOAM** device
21 during the commission of a crime to eject, release, or emit
22 orthochlorobenzalmalononitrile or oleoresin capsicum or threatens
23 to use a self-defense spray **OR FOAM** device during the commission of
24 a crime to temporarily or permanently disable another person, the
25 judge who imposes sentence upon a conviction for that crime shall
26 consider the defendant's use or threatened use of the self-defense
27 spray **OR FOAM** device as a reason for enhancing the sentence.

1 (4) A person shall not sell a self-defense spray **OR FOAM**
2 device to a minor. A person who violates this subsection is guilty
3 of a misdemeanor.

4 (5) Subsection (2) does not prohibit ~~either~~ **ANY** of the
5 following:

6 (a) The reasonable use of a self-defense spray **OR FOAM** device
7 **CONTAINING NOT MORE THAN 2% OLEORESIN CAPSICUM** by a law enforcement
8 officer in the performance of the law enforcement officer's duty.

9 **(B) THE REASONABLE USE OF A SELF-DEFENSE SPRAY OR FOAM DEVICE**
10 **CONTAINING NOT MORE THAN 10% OLEORESIN CAPSICUM BY A PERSON WHO IS**
11 **EMPLOYED BY A COUNTY SHERIFF OR A CHIEF OF POLICE AND WHO IS**
12 **AUTHORIZED IN WRITING BY THE COUNTY SHERIFF OR CHIEF OF POLICE TO**
13 **CARRY AND USE A SELF-DEFENSE SPRAY OR FOAM DEVICE, WHILE IN**
14 **PERFORMANCE OF HIS OR HER DUTIES.**

15 **(C) ~~(b)~~** The reasonable use of a self-defense spray **OR FOAM**
16 device **CONTAINING NOT MORE THAN 2% OLEORESIN CAPSICUM** by a person
17 in the protection of a person or property under circumstances which
18 would justify the person's use of physical force.