

HOUSE BILL No. 5754

February 19, 2008, Introduced by Reps. Hansen, Rick Jones, Meekhof, Stahl, Moss, Pastor, Brandenburg, Casperson, Brown, Walker, Steil, Opsommer, Hoogendyk, Ball, Booher, Robertson, Nofs, Elsenheimer, Schuitmaker, Green, Mayes, Meisner, Polidori, Proos, Acciavatti, Knollenberg, Agema, Huizenga, Garfield, Nitz, Pearce, Emmons, Stakoe, LeBlanc, Bieda, McDowell, David Law, Caswell, Shaffer, LaJoy, Gonzales, Espinoza, Virgil Smith, Wenke and Moolenaar and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 224a (MCL 750.224a), as amended by 2006 PA 457.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 224a. (1) Except as otherwise provided in this section, a
2 person shall not sell, offer for sale, or possess in this state a
3 portable device or weapon from which an electrical current,
4 impulse, wave, or beam may be directed, which current, impulse,
5 wave, or beam is designed to incapacitate temporarily, injure, or
6 kill.

7 (2) This section does not prohibit any of the following:

8 (a) The possession and reasonable use of a device that uses
9 electro-muscular disruption technology by any of the following
10 individuals, if the individual has been trained in the use,

1 effects, and risks of the device, and, **IN THE CASE OF AN INDIVIDUAL**
2 **DESCRIBED IN SUBPARAGRAPHS (i) TO (x)**, is using the device while
3 performing his or her official duties:

4 (i) A peace officer.

5 (ii) An employee of the department of corrections who is
6 authorized in writing by the director of the department of
7 corrections to possess and use the device.

8 (iii) A local corrections officer authorized in writing by the
9 county sheriff to possess and use the device.

10 (iv) An individual employed by a local unit of government that
11 utilizes a jail or lockup facility who has custody of persons
12 detained or incarcerated in the jail or lockup facility and who is
13 authorized in writing by the chief of police, director of public
14 safety, or sheriff to possess and use the device.

15 (v) A probation officer.

16 (vi) A court officer.

17 (vii) A bail agent authorized under section 167b.

18 (viii) A licensed private investigator.

19 (ix) An aircraft pilot or aircraft crew member.

20 (x) An individual employed as a private security police
21 officer. As used in this subparagraph, "private security police"
22 means that term as defined in section 2 of the private security
23 business and security alarm act, 1968 PA 330, MCL 338.1052.

24 **(xi) AN INDIVIDUAL WHO HOLDS A VALID LICENSE TO CARRY A**
25 **CONCEALED PISTOL UNDER SECTION 5B OF 1927 PA 372, MCL 28.425B.**

26 (b) Possession solely for the purpose of delivering a device
27 described in subsection (1) to any governmental agency or to a

1 laboratory for testing, with the prior written approval of the
2 governmental agency or law enforcement agency and under conditions
3 determined to be appropriate by that agency.

4 (3) A manufacturer, authorized importer, or authorized dealer
5 may demonstrate, offer for sale, hold for sale, sell, give, lend,
6 or deliver a device that uses electro-muscular disruption
7 technology to a person authorized to possess a device that uses
8 electro-muscular disruption technology and may possess a device
9 that uses electro-muscular disruption technology for any of those
10 purposes.

11 (4) A person who violates ~~this section~~ **SUBSECTION (1)** is
12 guilty of a felony punishable by imprisonment for not more than 4
13 years or a fine of not more than \$2,000.00, or both.

14 (5) **AN AUTHORIZED DEALER OR OTHER PERSON WHO SELLS A DEVICE**
15 **THAT USES ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY TO AN INDIVIDUAL**
16 **DESCRIBED IN SUBSECTION (2) (A) (xi) SHALL PROVIDE TO THE INDIVIDUAL**
17 **PURCHASING THE DEVICE, AT THE TIME OF THE SALE, TRAINING ON THE**
18 **USE, EFFECTS, AND RISKS OF THE DEVICE. A PERSON WHO VIOLATES THIS**
19 **SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT**
20 **FOR NOT MORE THAN 30 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR**
21 **BOTH.**

22 (6) BOTH OF THE FOLLOWING APPLY TO THE USE OF A DEVICE THAT
23 USES ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY BY AN INDIVIDUAL
24 DESCRIBED IN SUBSECTION (2) (A) (xi) :

25 (A) THE INDIVIDUAL SHALL NOT USE THE DEVICE AGAINST ANOTHER
26 PERSON UNLESS THE DEVICE IS REASONABLY USED IN THE PROTECTION OF
27 PERSON OR PROPERTY UNDER CIRCUMSTANCES WHICH WOULD JUSTIFY THE

1 INDIVIDUAL'S USE OF PHYSICAL FORCE. AN INDIVIDUAL WHO VIOLATES THIS
2 SUBDIVISION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
3 FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR
4 BOTH.

5 (B) IF THE INDIVIDUAL USES, OR THREATENS TO USE, THE DEVICE
6 DURING THE COMMISSION OF A CRIME TO TEMPORARILY OR PERMANENTLY
7 DISABLE ANOTHER PERSON, THE JUDGE WHO IMPOSES SENTENCE UPON A
8 CONVICTION FOR THAT CRIME SHALL CONSIDER THE DEFENDANT'S USE OR
9 THREATENED USE OF THE DEVICE AS A REASON FOR ENHANCING THE
10 SENTENCE.

11 (7) ~~(5)~~—As used in this section:

12 (a) "A device that uses electro-muscular disruption
13 technology" means a device to which all of the following apply:

14 (i) The device is capable of creating an electro-muscular
15 disruption and is used or intended to be used as a defensive device
16 capable of temporarily incapacitating or immobilizing a person by
17 the direction or emission of conducted energy.

18 (ii) The device contains an identification and tracking system
19 that, when the device is initially used, dispenses coded material
20 traceable to the purchaser through records kept by the
21 manufacturer.

22 (iii) The manufacturer of the device has a policy of providing
23 the identification and tracking information described in
24 subparagraph (ii) to a police agency upon written request by that
25 agency.

26 (b) "Local corrections officer" means that term as defined in
27 section 2 of the local corrections officers training act, 2003 PA

1 125, MCL 791.532.

2 (c) "Peace officer" means any of the following:

3 (i) A police officer or public safety officer of this state or
4 a political subdivision of this state, including motor carrier
5 officers appointed under section 6d of 1935 PA 59, MCL 28.6d, and
6 security personnel employed by the state under section 6c of 1935
7 PA 59, MCL 28.6c.

8 (ii) A sheriff or a sheriff's deputy.

9 (iii) A police officer or public safety officer of a junior
10 college, college, or university who is authorized by the governing
11 board of that junior college, college, or university to enforce
12 state law and the rules and ordinances of that junior college,
13 college, or university.

14 (iv) A township constable.

15 (v) A marshal of a city, village, or township.

16 (vi) A conservation officer of the department of natural
17 resources or the department of environmental quality.

18 (vii) A law enforcement officer of another state or of a
19 political subdivision of another state or a junior college,
20 college, or university in another state, substantially
21 corresponding to a law enforcement officer described in
22 subparagraphs (i) to (vi).

23 (viii) A federal law enforcement officer.

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. 5755(request no.
26 00170'07 *) of the 94th Legislature is enacted into law.