

Legislative Analysis



ALLOW CONCEALED PISTOL LICENSEES TO USE 10% PEPPER SPRAYS AND FOAMS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6053

Sponsor: Rep. Hugh Crawford

1st Committee: Judiciary

2nd Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 6-1-10

A SUMMARY OF HOUSE BILL 6053 AS INTRODUCED 4-20-10

The bill would amend the Michigan Penal Code (MCL 750.224d) to do the following things:

- Allow a concealed pistol licensee to use a self-defense spray or foam containing **not more than 10 percent** oleoresin capsicum (a derivative of hot peppers), if the person has been trained in the device's use, risks, and effects, and possesses evidence of that training while carrying the device. (Currently, members of the general public, whether concealed pistol licensees or not, are limited to using pepper sprays or foams with **not more than two percent** oleoresin capsicum. Persons who have concealed pistol licenses as of the bill's effective date would not need to receive training until they renewed their license.)
- Legalize the carrying of a self-defense spray or foam device, openly or concealed, including in a motor vehicle. The term "self-defense spray or foam" has a specific meaning described below (generally speaking, it refers to one form of tear gas in a container of 35 grams or less or a pepper spray or foam in a solution of not more than 10 percent oleoresin capsicum or OC).
- Specify that the penalty for selling a self-defense spray or foam to a minor, currently classified as a misdemeanor, is imprisonment for not more than 90 days, a fine of not more than \$500, or both. This would not change current law. The penalty that the bill would add is the penalty that currently applies to misdemeanors for which no penalty is specified [MCL 750.504].

DETAILED SUMMARY:

Unless an exception applies, Section 224 of the Michigan Penal Code makes it unlawful to manufacture, sell, offer for sale, or possess a device that is designed to eject a gas or substance to render a person temporarily or permanently disabled. [MCL 750.224(1)(e)]. A violation of the ban on gas-ejecting devices is a felony punishable by not more than five years in prison, a fine of not more than \$2,500, or both. An exception exists for a "**self-defense spray or foam device** as defined in Section 224d" — the manufacture, sale, or possession of this type of device is not a felony, [Section 224(3)(a), MCL 750.224(3)(a)].

Under Section 224d, the term "***self-defense spray or foam device***" means a device that releases either (1) 35 grams or less of any combination of orthochlorobenzalmalonitrile (a form of tear gas sometimes called CS gas) and inert ingredients, or (2) a solution containing 10 percent or less oleoresin capsicum (sometimes called OC for short, a derivative of hot peppers). In addition, the device must not release any harmful or disabling substance other than the allowed quantity of CS or the allowed concentration of OC. In other words, the device must only contain CS or OC as an active ingredient, it must contain CS or OC in a permissible quantity or concentration, and it must not contain any other harmful or disabling ingredient.

As noted above, if a device meets this definition, it is not a felony to manufacture, sell, offer to sell, or possess it, but it still a misdemeanor to ***use*** this type of device unless it is used for defensive purposes in accordance with Section 224d of the Penal Code. Apart from law enforcement officers and other persons listed in Section 231¹ of the Penal Code [MCL 750.231] who are exempt the ban on possessing gas-ejecting devices found in Section 224 and the restrictions on the use of self-defense sprays and foams contained in Section 224d, Section 224d allows the "reasonable use" of such a device for defensive purposes by the following:

- Employees of a county sheriff or police chief, who are authorized in writing to carry and use the device and trained in its use, effects, and risks, may use it in the performance of official duties. (We understand this section to apply to non-MCOLES certified employees of sheriff or police departments, such as certain jail employees. If they have the required training and written authorization, these employees may use either a container of CS tear gas containing 35 grams or less or pepper spray or foam with not more than 10 percent OC content. As noted previously, other law enforcement officers, military personnel, correction officers, and others are exempt from Sections 224 and 224d under Section 231 of the Penal Code [MCL 750.231].)
- ***Any person may use a pepper spray or foam with not more than two percent OC content in the protection of a person or property under circumstances that would justify the use of physical force.*** (In other words, members of the general public, although not allowed to use CS tear gas, may use a pepper spray with no more than ***two percent*** OC, but only in a reasonable manner to protect a person or property in appropriate circumstances.)

¹ Persons exempt from Sections 224 and 224d under Section 231 are: (1) regularly-employed federal peace officers and peace officers employed by the State of Michigan or a political subdivision of the state; (2) regularly-employed corrections employees (and employees of privately-operated youth correctional facilities) who are authorized in writing by the director of the Department of Corrections to carry a concealed weapon in the official performance of duties or while going or returning from those duties; (3) members of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard while carrying weapons in the line of duty or incidental to duty; (4) organizations authorized by law to purchase or receive weapons from the United States or the State of Michigan; (5) the member of the National Guard or any other military reservist while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the military organization; (6) a security guard employed by the state and granted limited arrest powers; and (7) a motor carrier appointed under Section 6d of Public Act 59 of 1935, MCL 28.6d.

House Bill 6053 would allow a concealed pistol licensee to use a self-defense spray or foam containing not more than **10 percent**, rather than **two percent**, oleoresin capsicum, if the person has been trained in the device's use, risks, and effects, and possesses evidence of that training while carrying the device. As noted previously, currently members of the general public, whether concealed pistol licensees or not, are limited to using pepper sprays or foams with not more than two percent oleoresin capsicum. As with members of the general public who may reasonably use peppers sprays and foams containing not more than two percent OC, a concealed pistol licensee could only use a foam or spray containing not more than 10 percent OC in a reasonable fashion to protect a person or property under circumstances that would justify the use of physical force

To use a spray or foam device containing not more than 10 percent OC, a concealed pistol licensee would have to be trained in the use of 10 percent pepper spray or foam by a person or entity that provides training for sheriff or police department employees or that provides concealed pistol license training under Section 5j of Public Act 372 of 1927 [MCL 28.425j]. The training requirements would not apply to people who have a concealed pistol license on the effective date of the bill until they renew their licenses.

Open or concealed carry of tear gas and pepper spray and foams. The bill would also legalize the carrying of a "self-defense spray or foam device," openly or concealed, including in a motor vehicle, by "a person described in subdivision (a) through (c)." [Note: The term "self-defense spray or foam device" refers to both CS tear gas and pepper spray or foam of not more than 10 percent OC but only persons referred to in subdivision (a) are allowed to use both tear gas and pepper sprays and foams. Persons referred to in subdivision (b) are allowed to use pepper sprays and foams containing not more than two percent OC, but are not allowed to use tear gas. Subdivision (c) is the new provision allowing concealed pistol licensees to use 10 percent OC sprays and foams, but not tear gas. As written, the bill could be read to allow some people to carry products that they could not lawfully use.]

Sale to minors. The bill would specify that the penalty for selling a self-defense spray or foam to a minor, currently classified as a misdemeanor, is imprisonment for not more than 90 days, a fine of not more than \$500, or both. This would not change current law, as this penalty is the same as currently applies to misdemeanors for which no penalty has been specified (MCL 750.504).

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.