

HOUSE BILL No. 6053

April 20, 2010, Introduced by Reps. Crawford, Rick Jones, Elsenheimer, Hildenbrand, Meekhof, Moss, Agema, McMillin, Wayne Schmidt, Opsommer, Paul Scott, Haveman, Kowall, Calley, Proos, Horn, Lund, Moore, Pavlov, Daley, DeShazor, Bolger, Tyler, Denby, Walsh, Genetski, Lori, Meltzer, Haines, Knollenberg, Pearce, Stamas, Ball, Rogers, Green, Caul, Schuitmaker, Sheltroun, Hansen, Kurtz, Booher, LeBlanc, Mayes, Spade, Bledsoe, Haase, Geiss, Liss, Constan, Young, Slezak and Huckleberry and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 224d (MCL 750.224d), as amended by 2006 PA 401.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 224d. (1) As used in this section and section 224, "self-
2 defense spray or foam device" means a device to which all of the
3 following apply:

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

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

8 (ii) A solution containing not more than 10% oleoresin
9 capsicum.

10 (b) The device does not eject, release, or emit any gas or

1 substance that will temporarily or permanently disable,
2 incapacitate, injure, or harm a person with whom the gas or
3 substance comes in contact, other than the substance described in
4 subdivision (a)(i) or (ii).

5 (2) Except as otherwise provided in this section, a person who
6 uses a self-defense spray or foam device to eject, release, or emit
7 orthochlorobenzalmalononitrile or oleoresin capsicum at another
8 person is guilty of a misdemeanor, punishable by imprisonment for
9 not more than 2 years, or a fine of not more than \$2,000.00, or
10 both.

11 (3) If a person uses a self-defense spray or foam device
12 during the commission of a crime to eject, release, or emit
13 orthochlorobenzalmalononitrile or oleoresin capsicum or threatens
14 to use a self-defense spray or foam device during the commission of
15 a crime to temporarily or permanently disable another person, the
16 judge who imposes sentence upon a conviction for that crime shall
17 consider the defendant's use or threatened use of the self-defense
18 spray or foam device as a reason for enhancing the sentence.

19 (4) A person shall not sell a self-defense spray or foam
20 device to a minor. A person who violates this subsection is guilty
21 of a misdemeanor **PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90**
22 **DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.**

23 (5) Subsection (2) does not prohibit either of the following:

24 (a) The reasonable use of a self-defense spray or foam device
25 containing not more than 10% oleoresin capsicum by a person who is
26 employed by a county sheriff or a chief of police and who is
27 authorized in writing by the county sheriff or chief of police to

1 carry and use a self-defense spray or foam device and has been
2 trained in the use, effects, and risks of the device, while in
3 performance of his or her official duties.

4 (b) The reasonable use of a self-defense spray or foam device
5 containing not more than 2% oleoresin capsicum by a person in the
6 protection of a person or property under circumstances ~~which~~ **THAT**
7 would justify the person's use of physical force.

8 (C) THE REASONABLE USE OF A SELF-DEFENSE SPRAY OR FOAM DEVICE
9 CONTAINING NOT MORE THAN 10% OLEORESIN CAPSICUM BY A PERSON WHO IS
10 LICENSED UNDER SECTION 5B OF 1927 PA 372, MCL 28.425B, TO CARRY A
11 CONCEALED PISTOL OR WHO IS EXEMPT FROM LICENSURE UNDER SECTION 12A
12 OF 1927 PA 372, MCL 28.432A, WHO HAS BEEN TRAINED IN THE USE,
13 EFFECTS, AND RISKS OF THE DEVICE BY A PERSON OR ENTITY THAT
14 PROVIDES TRAINING UNDER SUBDIVISION (A), OR BY A PERSON OR ENTITY
15 THAT PROVIDES TRAINING UNDER SECTION 5J OF 1927 PA 372, MCL
16 28.425J, WHILE IN THE PROTECTION OF A PERSON OR PROPERTY UNDER
17 CIRCUMSTANCES THAT WOULD JUSTIFY THE PERSON'S USE OF PHYSICAL
18 FORCE. A PERSON WHO HAS BEEN TRAINED IN THE USE, EFFECTS, AND RISKS
19 OF A SELF-DEFENSE SPRAY OR FOAM DEVICE FOR PURPOSES OF THIS
20 SUBDIVISION SHALL HAVE EVIDENCE OF THAT TRAINING IN HIS OR HER
21 POSSESSION WHILE CARRYING OR USING A SELF-DEFENSE SPRAY OR FOAM
22 DEVICE UNDER THIS SUBDIVISION. THE TRAINING REQUIREMENTS OF THIS
23 SUBDIVISION DO NOT APPLY TO AN INDIVIDUAL WHO IS LICENSED UNDER
24 SECTION 5B OF 1927 PA 372, MCL 28.425B, ON THE EFFECTIVE DATE OF
25 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION UNTIL HE OR SHE
26 RENEWS THAT LICENSE.

27 (D) THE CARRYING OF A SELF-DEFENSE SPRAY OR FOAM DEVICE,

- 1 WHETHER CONCEALED OR OTHERWISE, INCLUDING IN A MOTOR VEHICLE, BY A
- 2 PERSON DESCRIBED IN SUBDIVISIONS (A) THROUGH (C) .