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BILL ANALYSIS



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House Bill 4248 (Substitute H-1 as passed by the House)
House Bill 4501 (as passed by the House)
Sponsor: Representative Chris Afendoulis (H.B. 4248)
Representative Kurt Heise (H.B. 4501)
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 9-21-15

CONTENT

House Bill 4248 (H-1) would amend the Michigan Penal Code to make it a felony to take away or entice any minor under 16, instead of a female under 16 years of age, for certain purposes.

The bill also would repeal laws dealing with all of the following:

- **Advertising relating to sexual disease or affliction or to the virtues or effects of patent or other medicine in immoral or ambiguous language.**
- **The duty of a law enforcement officer to arrest people for mistreatment of animals.**
- **Derogatory statements about a bank or other financial institution.**
- **Dueling.**
- **Common carriers transporting explosives.**
- **Use of indecent language in the presence of women or children.**
- **Construction of gas stations in certain residential areas.**
- **Improper performances of "The Star Spangled Banner".**
- **The regulation of toxic or hazardous substances.**
- **The regulation of slaughterhouses and edible rendering establishments.**
- **A requirement that men respond to a call to the assistance of the Department of Natural Resources (DNR).**
- **The unauthorized sale or transfer of train, boat, or bus tickets.**

House Bill 4501 would amend the Code of Criminal Procedure to delete sentencing guidelines designations for two felonies that House Bill 4248 (H-1) would repeal.

House Bill 4501 is tie-barred to House Bill 4248. Each bill would take effect 90 days after enactment.

House Bill 4248 (H-1)**Taking or Enticing Away of a Minor**

The Penal Code prohibits a person from taking or enticing away any female under the age of 16 from her father, mother, guardian, or other person having the legal charge of the girl without the consent of the parent, guardian, or other person, for the purpose of prostitution, concubinage, sexual intercourse, or marriage. A violation is a felony punishable by up to 10

years' imprisonment. Under the bill, that penalty would apply to the taking or enticing away of a minor under the age of 16 (regardless of the minor's gender).

Repeal of Penal Code Violations

Immoral Advertising. Sections 34, 35, 36, and 37 of the Code prohibit and prescribe a misdemeanor penalty for certain "immoral" advertising relating to sexual disease or affliction. Section 39 makes it a misdemeanor to publicly display or advertise the virtues or effects of any patent or other medicine in "language of immoral tendency or of ambiguous character". The bill would repeal Sections 34, 35, 36, 37, and 39.

Arrest for Animal Mistreatment. Section 52 specifies that it is the duty of law enforcement officers to arrest and prosecute those who violate certain provisions of Chapter 9 (Animals) regarding the mistreatment of animals. For each instance of neglect of that duty, the offending officer is guilty of a misdemeanor. The bill would repeal Section 52.

Derogatory Statement about a Bank. Section 97 prohibits willfully and maliciously making, circulating, or transmitting any statement, rumor, or suggestion that is derogatory to the financial condition, or affects the solvency or financial standing, of a bank or other financial institution. A violation is a felony. The bill would repeal Section 97.

Dueling. Section 172 prohibits and prescribes a misdemeanor penalty for accepting a challenge to a duel and knowingly carrying or delivering any challenge or message concerning a duel. Section 173 prohibits and prescribes a misdemeanor penalty for posting or advertising another or using any reproachful or contemptuous language to or concerning another person for not fighting a duel or not sending or accepting a challenge of a duel. Section 173a specifies that the sport of fencing is not a violation of Section 171, 172, or 173, when face masks and other protective clothing designed to reduce the risk of injury are worn. The bill would repeal Sections 172, 173, and 173a, which make up Chapter 30. Public Act 96 of 2010 repealed Section 171, which prohibited engaging in or challenging another to a duel.

Section 319 provides that a person who fights a duel and inflicts a mortal wound is guilty of first-degree murder. Section 320 provides that a person who is present as the second of either party to a duel at which a mortal wound is inflicted is an accessory before the fact to the crime of murder. The bill would repeal Sections 319 and 320.

Common Carriers Transporting Explosives. Section 203 specifies that the regulations formulated by the Interstate Commerce Commission, pursuant to a former Federal law, are binding upon all common carriers engaged in intrastate commerce within Michigan that transport explosives by land. The bill would repeal Section 203.

Indecent Language. Section 337 makes it a misdemeanor for any person to use any indecent, immoral, obscene, vulgar, or insulting language in the presence or hearing of any woman or child. The bill would repeal Section 337.

Gas Stations. Section 501 prohibits building a gas station or public automobile garage in certain residential areas of certain cities, without first filing with the city clerk the written consent of 60% of the property owners within a radius of 400 feet of the proposed site. A violation is a misdemeanor. The bill would repeal Section 501.

Star Spangled Banner. Chapter 83 (The Star Spangled Banner) of the Code prohibits "The Star Spangled Banner" from being played, sung, or otherwise rendered in any public place or at any public entertainment, or in certain facilities, except as an entire and separate composition or number and without embellishments. It also prohibits the song or any part of it from being played as a part or selection of a medley, for dancing, or as an exit march. Chapter 83 also prohibits certain people from allowing anyone who plays, sings, or performs

in certain facilities to play, sing, or otherwise render "The Star Spangled Banner" in violation of the chapter. A violation of Chapter 83 is a misdemeanor. The bill would repeal Sections 541, 542, and 543 of the Code, which make up Chapter 83.

Repeal of Other Laws

Military Duel. Section 114 of the Michigan Code of Military Justice provides that a person subject to that Code who fights, promotes, or is concerned in or connives at fighting a duel, or who knows of a challenge sent or about to be sent and fails to report the fact promptly to the proper authority, must be punished as directed by a court martial. The bill would repeal that section.

Toxic & Hazardous Substances. The Toxic Substance Control Commission Act established and prescribed the powers and duties of the State Toxic Substance Control Commission; required the reporting of certain abnormalities in human or animal health; created a Toxic Substance Emergency Fund; and prescribed misdemeanor penalties for violations of the Act. The Act took effect on January 1, 1979, but, under a sunset provision, has not applied since December 31, 1989. The bill would repeal the Toxic Substance Control Commission Act.

The Hazardous Substances Act regulates the intrastate distribution and sale of hazardous substances intended or suitable for household use. The Act declares certain substances or articles to be hazardous or banned, requires labeling of hazardous substances, prohibits certain acts, prescribes misdemeanor and felony penalties for violations, allows inspections of buildings or vehicles where hazardous products are manufactured or stored, and requires biannual reports of court orders or judgments issued under the Act. The bill would repeal the Hazardous Substances Act.

Slaughterhouses & Edible Rendering Establishments. Public Act 280 of 1965 provides for the licensing and regulation of slaughterhouses; edible rendering establishments; and wholesale fabricating, processing, and storage establishments. A violation of the Act is a misdemeanor. The bill would repeal the Act.

DNR Call to Assistance. Section 51508 of the Natural Resources and Environmental Protection Act authorizes the DNR to call to its assistance in emergencies any able-bodied male who is at least 18 years old. Unless the person is an inmate of a State or county correctional institution, he must be paid for his services in accordance with the State's minimum wage law. A man who refuses to assist, without reasonable justification, is guilty of a misdemeanor. The bill would repeal Section 51508.

Unauthorized Transfer of Tickets. Public Act 269 of 1937 prohibits buying or selling, or offering to buy or sell, the unused portion of any nontransferable ticket issued by any railroad or steamship company or bus line if the ticket is restricted to use only by the original buyer or the person for whom the ticket was originally issued. A violation is punishable by a maximum fine of \$100 and/or up to 90 days' imprisonment, and each prohibited transaction must be deemed a separate offense. The bill would repeal Public Act 269.

House Bill 4501

Under the Code of Criminal Procedure, an agriculture-related hazardous substance violation of the Hazardous Substances Act is a Class G public safety felony, with a statutory maximum sentence of five years' imprisonment. Making statements derogatory to the financial condition of a bank is a Class H property felony, with a statutory maximum sentence of four years' imprisonment. The bill would delete both of those from the sentencing guidelines.

FISCAL IMPACT

The bills could have offsetting fiscal impacts on State and local government. By broadening the enticement offense to include the enticement of males under 16 years of age, House Bill 4248 (H-1) could result in convictions for violations that otherwise would not be prosecuted. Since 1999, there have been approximately 12 convictions under this section. For any new felony sentence convictions, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. With any increase in the number of felony cases, costs to local courts and law enforcement could increase. Additionally, any increase in collected fine revenue would be dedicated to public libraries.

Concerning the sections that would be repealed, State government would save funds from no longer incarcerating individuals under the felony sections. According to felony court dispositions from 1999 to 2013, there have been no convictions for any of the affected felonies. Local government would save funds from avoided court costs in felony and misdemeanor cases, and from avoided costs of incarceration under the misdemeanor sections. To the extent that penal fines are currently collected under any of the sections that would be repealed, public libraries would no longer receive that revenue.

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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.