

Legislative Analysis



REPEAL EXPLOSIVES ACT OF 1970

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House Bill 4523 as introduced
Sponsor: Rep. Steven Johnson

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4524 as introduced
Sponsor: Rep. Scott VanSingel

House Bill 5137 as introduced
Sponsor: Rep. Steven Johnson

House Bill 5138 as introduced
Sponsor: Rep. Steven Johnson

Committee: Judiciary
Complete to 10-30-17

SUMMARY:

House Bill 4523

House Bill 4523 would repeal the Explosives Act of 1970, which currently requires certain permitting, storage, and handling procedures for such explosives as dynamite, blasting powder, nitroglycerine, and TNT. The repeal would take effect 90 days after the effective date of HB 4523. (MCL 29.41 through 29.55)

House Bill 4524

House Bill 4524 would amend the Revised Judicature Act to update language and references to account for the repeal of the Explosives Act. Currently, a defendant is jointly and severally liable for causing personal injury, property damage, or wrongful death by handling an explosive under the Explosives Act while under the influence of intoxicating liquor or a narcotic. Because HB 4523 would repeal the Explosives Act, HB 4524 would amend its reference to that act while still holding a person liable for the conduct.

The bill also would also make several linguistic changes for clarity and would be tie-barred to HB 4523, which means that HB 4524 would not be enacted unless HB 4523 is enacted.

MCL 600.6312

House Bill 5137

House Bill 5137 would amend the Michigan Penal Code by adding Section 204b, to apply the federal standards for explosives, and Section 204c, to prohibit a person from handling explosive materials while under the influence of an alcoholic liquor or controlled substance.

Section 204b would specify that a person could not import, manufacture, distribute, or store explosive materials unless that activity complies with Sections 841 through 848 (within Chapter 40 - Importation, Manufacture, Distribution, and Storage of Explosive Materials) of Title 18 (Crimes and Criminal Procedure) of the United States Code (USC), and with

Part 555 (Commerce in Explosives) of Title 27 (Alcohol, Tobacco Products, and Firearms) of the Code of Federal Regulations (CFR). “Explosive materials” would be defined in 18 USC §841, which includes explosives, blasting agents, and detonators.

Some notable differences and similarities of the current Explosives Act and the federal regulations include:

- Gaining a permit or license:
 - Under the Explosives Act, an application is required with the name, address, date of birth, Social Security number, and signature of the applicant, as well as an affidavit of intent for use of explosives, whether the applicant has been convicted of a felony within five years, and a \$1.00 fee (MCL 29.44). The permit is valid for one year (MCL 29.46).
 - Under the United States Code, the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person, are required. Additionally, each applicant pays a fee set by the Attorney General, which is no more than \$50.00 for a limited permit and \$200.00 any other license or permit. The permit would have to be renewed every three years, with an additional renewal fee of half of the original fee. (§843(a))
 - Under the Code of Federal Regulations, each applicant pays a \$200.00 fee for a three-year license with a \$100.00 renewal fee to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). (§555.42)
- Under the United States Code, a person may not gain a permit if they are under indictment for, or have been convicted in any court of, a crime punishable by imprisonment for more than one year; have been committed to a mental institution or declared mentally disabled by a court; or have been discharged from the armed forces under dishonorable discharge. (§843(b)(1))
- Both statutes provide for a hearing and appeal process for denial or revocation of a permit or license. (§843(e))
- The United States Code provides for inspection by the Attorney General or Secretary during business hours. (§843(f))
- The Explosives Act expressly exempts a permit from having to be with explosives at a storage site (MCL 29.43(b)), while the United States Code specifies that licenses and user permits have to be kept posted and available for inspection on the premises covered by the license and permit. (§843(g))

Under HB 5137, a violation of Section 204b would be a misdemeanor punishable by imprisonment for up to two years, a fine of up to \$10,000, or both, and would not preclude a conviction or sentence for a violation of any other applicable law. Currently, under 18 USC §844, a person who violates the act could be fined an unspecified amount, imprisoned up to 20 years, or both, while under 27 CFR 555.161, a person who violates the act could be fined up to \$10,000, imprisoned for up to 10 years, or both.

HB 5137 would also add Section 204c to prohibit a person from handling any explosive materials while under the influence of an alcoholic liquor or controlled substance. A

violation of this section would be a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$500, or both.

Section 204c would use the definition of “alcoholic liquor” contained in the Michigan Vehicle Code (MCL 257.1d), which is any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in MCL 436.1105 of the Michigan Liquor Control Code (any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, containing 1/2 of 1% or more of alcohol by volume, that are fit for use for food or beverage purposes as defined and classified by the Liquor Control Commission).

Section 204c would use the definition of “controlled substance” contained in the Public Health Code (MCL 333.7104), which is a drug, substance, or immediate precursor included in schedules one through five in MCL 333.7211 through 333.7220.

HB 5137 would take effect 90 days after it is enacted.

Proposed MCL 750.204b and 750.204c

House Bill 5138

House Bill 5138 would amend the sentencing guidelines in the Code of Criminal Procedure to include a violation of the newly created Section 204b, above.

The bill would add a Class “G” public safety sentencing guideline for the violation of importing, manufacturing, distributing, or storing explosives in violation of certain federal laws and regulations, which would include a maximum imprisonment sentence of two years.

The bill also would amend the sentencing guideline for a violation of MCL 750.212a. Currently, the sentence is for an explosives violation involving a vulnerable target *causing death or injury*. The bill would remove the italicized words, allowing punishment for any explosives violation involving a vulnerable target, and not just those that result in death or injury.

The bill is tie-barred to HB 5137, which means that HB 5138 would not be enacted unless HB 5137 is enacted. HB 5138 would take effect 90 days after it is enacted.

MCL 777.16k

FISCAL IMPACT:

House Bill 4523

House Bill 4523 would have a revenue-neutral fiscal impact on local law enforcement agencies. Pursuant to the Explosives Act of 1970, 1970 PA 202, local law enforcement agencies are allowed to charge a \$1.00 administrative fee to process applications for the purchase and possession of explosives. This bill would repeal the Explosives Act of 1970,

and therefore local law enforcement agencies would no longer have to process and issue permits.

Depending on the number of people that were actually charged under provisions of the bill that are being eliminated, the bill could result in a decrease in costs for local units of government related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, the constitutionally designated recipients of those revenues.

House Bill 4524

HB 4524 would have no fiscal impact on the state or on local units of government.

House Bill 5137

HB 5137 would have an indeterminate fiscal impact on state and local correctional systems that would depend on the number of persons convicted under provisions of the bill. New misdemeanor convictions resulting in imprisonment for one year or more would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. New misdemeanor convictions resulting in imprisonment for less than one year would result in increased costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on local court funding units and would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bill 5138

HB 5138 would amend the sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

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