

Legislative Analysis



INCREASE PEPPER SPRAY CONCENTRATION

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House Bill 5220 reported from committee w/o amendment

Sponsor: Rep. Michele Hoitenga

Committee: Judiciary

Complete to 2-13-18

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

(Enacted as Public Act 98 of 2018)

BRIEF SUMMARY: House Bill 5220 would amend the Michigan Penal Code to increase the amount of oleoresin capsicum allowed in self-defense spray or foam devices from 10% to 18% and to allow the devices to contain an ultraviolet dye.

FISCAL IMPACT: House Bill 5220 would have an indeterminate fiscal impact on the state and on local units of government. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

According to committee testimony, a violent crime is committed in the United States every 26 seconds. For personal protection, self-defense spray (pepper spray) is commonly carried by civilians who are uncomfortable with carrying a firearm. Pepper spray is a reasonable, nonlethal alternative to a firearm for personal protection. Most other states have increased the allowable amount of oleoresin capsicum to 18% in their self-defense sprays. Michigan only allows a 10% composition. This has hindered many Michiganders from purchasing pepper spray online because many companies will not ship pepper spray to Michigan if it contains over 10% oleoresin capsicum.

THE CONTENT OF THE BILL:

Oleoresin capsicum (OC), derived from chili peppers, is the active ingredient in self-defense spray (pepper spray). Currently, a self-defense spray or foam device can contain up to 10% OC in its solution. House Bill 5220 would increase the amount allowed to 18% OC. The bill also would allow a self-defense spray or foam device to include a solution containing an ultraviolet dye, with up to 18% OC.

Under current law, the use of a self-defense spray or foam device containing up to 10% OC is prohibited, except for (1) reasonable use in the performance of official duties by a trained employee of a county sheriff or chief of police who is authorized in writing to carry and use the spray, or (2) reasonable use by a person in the protection of a person or property under circumstances that would justify the use of physical force. The bill would increase the amount of allowable OC to 18% for both of these permissible uses, and also allow a person to reasonably use, in the justified protection of a person or property, a self-defense spray or foam device containing an ultraviolet dye (with up to 18% OC).

MCL 750.224d

BACKGROUND INFORMATION:

The amount of OC allowed in self-defense spray was last changed in 2010, when it was increased from 2% to 10% for both police and personal protection.

FISCAL INFORMATION:

House Bill 5220 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons that might be convicted of selling self-defense sprays or foam devices to minors. New misdemeanor convictions would increase 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. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

ARGUMENTS:

For:

Supporters of the bill argue that increasing the amount of OC allowed in Michigan would align this state with the 45 other states that allow 18% OC in self-defense spray. Additionally, the ultraviolet dye in personal use self-defense sprays would help law enforcement identify perpetrators. When contacted by the spray, the dye would be visible under ultraviolet light for about a week.

Against:

Critics of the bill argue that OC affects the respiratory, olfactory, and ocular systems of the body, with health effects that can range from mild irritation to death. An increase in OC could cause serious injuries not only to an intended target, but to an untrained user as well. As a result, opponents of the bill would like to see research conducted with 18% OC to determine its exact effects on the body. If the effects from this higher percentage are too detrimental, then it could be unsafe for use as a self-defense product.

POSITIONS:

A representative from Damsels in Defense testified in support of the bill. (12-5-17)

A representative from the Michigan State Police indicated a neutral position regarding the bill. (12-5-17)

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