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BILL



ANALYSIS

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House Bill 4523 (Substitute S-1)
House Bills 4524, 5137, and 5138 (as passed by the House)
Sponsor: Representative Steven Johnson (H.B. 4523, 5137, and 5138)
Representative Scott VanSingel (H.B. 4524)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 1-16-18

CONTENT

House Bill 4523 (S-1) would repeal the Explosives Act, which governs the handling, storage, sale, and transportation of explosives.

House Bill 5137 would amend the Michigan Penal Code to do the following:

- Prohibit a person from importing, manufacturing, distributing, or storing explosive materials in the State, unless those activities complied with Federal law and regulations.
- Prohibit a person from handling any explosive materials while under the influence of alcoholic liquor or controlled substance.
- Prescribe penalties for a violation of either of the proposed prohibitions.

House Bill 4524 would amend a section of the Revised Judicature Act that provides for joint and several liability arising out of certain acts or omissions, to change a reference to reflect the repeal of the Explosives Act.

House Bill 5138 would amend the sentencing guidelines in the Code of Criminal Procedure to include the offense of importing, manufacturing, distributing, or storing explosives in violation of Federal laws and regulations, proposed by House Bill 5137, as a Class G crime against public safety with a statutory maximum sentence of two years' imprisonment.

House Bill 4524 is tie-barred to House Bill 4523, and House Bill 5138 is tie-barred to House Bill 5137. Each bill would take effect 90 days after its enactment. House Bills 4523 (S-1), 4524, and 5137 are discussed in more detail below.

House Bill 4523 (S-1)

The Explosives Act generally prohibits a person from handling, storing, controlling, using, selling, purchasing, transferring, transporting, or otherwise disposing of an explosive unless he or she has applied for, obtained, and has on his or her person a valid permit issued by an officer of a local police or sheriff's department or a designated officer of the State Police. The Act also prescribes requirements governing the sale or transfer of explosives by a dealer, the revocation of a permit, and the storage and handling of explosives. A person who violates any

provision of the Act is guilty of a misdemeanor punishable by a maximum fine of \$500, imprisonment for up to one year, or both.

The bill would repeal the Act, effective 90 days after the bill's enactment.

House Bill 5137

The bill would add Section 204b to the Penal Code to prohibit a person from importing, manufacturing, distributing, or storing explosive materials in the State, unless those activities complied with 18 USC 841 to 848 and 27 CFR 555. (Please see **BACKGROUND** for a discussion of the relevant Federal statutes and regulations.) A person who violated Section 204b would be guilty of a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$10,000, or both. A conviction or sentence imposed for a violation of Section 204b would not preclude a conviction or sentence for a violation of any other applicable law. As used in Section 204b, "explosive material" would mean that term as defined in 18 USC 841: explosives, blasting agents, and detonators.

The bill also would enact Section 204c to prohibit a person from handling any explosive materials while under the influence of alcoholic liquor or controlled substance. A person who violated Section 204c would be guilty of a misdemeanor punishable by imprisonment for up to one year, a maximum fine of \$500, or both.

House Bill 4524

Under the Revised Judicature Act, a defendant who is found liable for an act or omission that causes personal injury, property damage, or wrongful death is jointly and severally liable if the defendant's act or omission is a crime, an element of which is the use of alcohol or a controlled substance, for which the defendant is convicted and that is a violation of a section of law listed in the Act. The sections listed include Section 14 of the Explosives Act (which prohibits a person from handling an explosive while under the influence of alcoholic liquor or a narcotic). The bill instead would refer to conduct that violated *former* Section 14 of the Explosives Act.

MCL 29.41 et al. (H.B. 4523)

MCL 600.6312 (H.B. 4524)

Proposed MCL 750.204b & 750.204c (H.B. 5137)

MCL 777.16k (H.B. 5138)

BACKGROUND

Chapter 40 of Title 18 of the United States Code (18 USC 841-848) governs the importation, manufacture, distribution, and storage of explosives. Under 18 USC 842, a person is prohibited from engaging in the business of importing, manufacturing, or dealing in explosive materials without a license. Federal regulations require a person who intends to engage in such a business to file an application for an explosive manufacturer license, explosive importer license, or explosive dealer license with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). An application must include the following: a) appropriate identifying information, b) a photograph and fingerprint for each responsible party, and c) the names and appropriate identifying information for all employees who will be authorized to possess the explosive material (27 CFR 555.45). The applicant also must pay to the ATF a \$200 fee for each license, for each business premises. The license lasts three years, and may be renewed every three years for \$100 (27 CFR 555.42).

A person also may apply for and receive a Federal explosives permit (user, user-limited, or limited), which allows the person to receive, ship, and transport (but not distribute) explosive materials. To apply for a Federal explosives permit, the applicant must submit an application with information similar to that required for a license. A user permit requires a \$100 fee, lasts three years, and may be renewed. A user-limited permit is \$25, lasts three years, and is nonrenewable. A limited permit is \$25 and lasts one year.

Chapter 40 prohibits a wide range of conduct with respect to licensees, permittees, and their use, storage, and transportation of explosives. Violations are punishable by a range of criminal penalties, including fines and imprisonment. For example, a person who stores an explosive material in a manner that does not conform with Federal regulations must be fined or imprisoned for up to one year. A person who knowingly distributes explosives materials to someone under 21 years old is subject to a fine, imprisonment for up to 10 years, or both.

Chapter 40 also prohibits a person from maliciously damaging or destroying, or attempting to damage or destroy, a building, vehicle, or other person or real property owned or possessed by the United States. If a person violates this prohibition, and causes the death of another person, he or she is subject to the death penalty or imprisonment for a minimum of 20 years or for life, a fine, or both.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4523 (S-1)

The bill would have no fiscal impact on the State and could have a small positive fiscal impact on local government. Any decrease in misdemeanor arrests and convictions could reduce resource demands on law enforcement, court systems, and community supervision. Any associated decrease in fine revenue would reduce funding to public libraries.

The bill would have a neutral fiscal impact on law enforcement agencies, as under the current Explosives Act, agencies are allowed to charge a \$1 fee to fulfill a requirement to process applications for the purchase and possession of explosives, and under the repeal, both provisions would be removed.

House Bill 4524

The bill would have no fiscal impact on the State or local government.

House Bill 5137

The bill could have a negative fiscal impact on State and local government. Additional misdemeanor arrests and convictions could increase resource demands on law enforcement and court systems. New misdemeanor convictions resulting in imprisonment for one year or longer would increase costs to the State for correctional facilities and probation supervision. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Convictions resulting in imprisonment for less than one year would increase costs for county jails and local probation supervision. Any associated increase in fine revenue would increase funding to public libraries.

House Bill 5138

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Bruce Baker
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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.