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BILL



ANALYSIS

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House Bill 5220 (as passed by the House)
Sponsor: Representative Michele Hoytenga
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-5-18

CONTENT

The bill would amend the Michigan Penal Code to increase from 10% to 18% the maximum amount of oleoresin capsicum (OC) in a self-defense spray or foam device that a person may use in defense of people or property or that a law enforcement officer may use; and allow a person to use a self-defense spray or foam device containing an ultraviolet dye and not more than 18% OC in defense of people or property.

The Code generally prohibits the use of a self-defense spray or foam device to eject, release, or emit certain substances, including OC (commonly referred to as pepper spray), at another person. A violation is a misdemeanor punishable by up to two years' imprisonment or a maximum fine of \$2,000, or both. That prohibition, however, does not apply to the reasonable use of a self-defense spray or foam device containing not more than 10% OC under either of the following circumstances:

- By a person who is employed by a county sheriff or a chief of police who is authorized to carry and use it, and has been trained in the use, effects, and risks of the device, while in performance of his or her official duties.
- By a person in the protection of a person or property under circumstances that would justify the person's use of physical force.

For a person who is employed by a county sheriff or a chief of police, the bill would increase the percentage of OC permitted in a self-defense spray or foam device from 10% to 18%. For a person in the protection of a person or property, the person could use either of the following:

- A self-defense spray or foam device containing not more than 18% OC.
- A self-defense spray or foam device containing an ultraviolet dye and not more than 18% OC.

Currently, "self-defense spray or foam device" means a device that is capable of carrying, and ejects, releases, or emits one of the following: a) not more than 35 grams of any combination of orthochlorobenzalmalononitrile and inert ingredients, or b) a solution containing not more than 10% OC; and the device does not eject, release, or emit any gas or substance that will temporarily or permanently disable, incapacitate, injure, or harm a person with whom the gas or substance comes in contact, other than the substance described in a) or b). The bill would amend the definition to increase the permitted percentage of OC to 18%, and include a solution containing an ultraviolet dye and not more than 18% OC.

FISCAL IMPACT

The bill would have the effect of expanding the allowable defenses to prosecution for use of a self-defense spray or foam device that met the specifications of the bill. This could result in a marginal decrease in misdemeanor convictions and penalties associated with the use of these types of devices. The bill would likely not have a significant impact on State and local criminal justice costs.

Fiscal Analyst: John Maxwell

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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.