

PNEUMATIC GUN PEPPER SPRAY

Phone: (517) 373-8080
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House Bill 5694 as introduced
Sponsor: Rep. Pauline Wendzel
Committee: Judiciary
Complete to 2-14-22

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

SUMMARY:

House Bill 5694 would amend the Michigan Penal Code to include a cartridge or projectile containing pepper spray that can be fired from a pneumatic gun in the definition of *self-defense spray or foam device*.

The code generally prohibits a person from manufacturing, selling, offering for sale, or possessing, among other things, a device, weapon, cartridge, container, or contrivance designed to render a person temporarily or permanently disabled by the ejection, release, or emission of a gas or other substance. However, this prohibition does not apply to a *self-defense spray or foam device*, which the code currently defines as a device that is capable of carrying and ejects, releases, or emits one of the following (more commonly known as “pepper spray”):

- Not more than 35 grams of any combination of orthochlorobenzalmalononitrile and inert ingredients.
- A solution containing not more than 18% oleoresin capsicum.
- A solution containing an ultraviolet dye and not more than 18% oleoresin capsicum.

A device that ejects, releases, or emits any gas or substance (other than those listed above) that will temporarily or permanently disable, incapacitate, injure, or harm a person with whom it comes in contact is not a self-defense spray or foam device.

Under the bill, *self-defense spray or foam device* would mean a device that is capable of carrying, and ejecting, releasing, or emitting, *including through a cartridge or projectile*, one of the ingredients or solutions listed above. (The bill would still exclude a device that ejects, releases, or emits an incapacitating or harmful gas or substance other than those listed above.)

The bill would also add that the definition includes a cartridge or projectile that contains a substance listed above that is capable of being fired from a *pneumatic gun*.

Pneumatic gun is defined in the Firearms and Ammunition Act as any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.¹

The bill would take effect 90 days after its enactment.

MCL 750.224d

¹ See MCL 750.222(g): <http://legislature.mi.gov/doc.aspx?mcl-750-222>

BACKGROUND:

The code provides that a person who uses a self-defense spray or foam device to eject, release, or emit orthochlorobenzalmalononitrile or oleoresin capsicum at another person is guilty of a misdemeanor punishable by imprisonment for up to two years or a fine of up to \$2,000, or both. However, this provision does not prohibit either of the following:

- The reasonable use of a self-defense spray or foam device containing up to 18% oleoresin capsicum by a person who is employed by a sheriff or chief of police, is authorized in writing by the sheriff or chief of police to carry and use the device, and has been trained in its use, effects, and risks, while in the performance of the person's official duties.
- The reasonable use of a self-defense spray containing up to 18% oleoresin capsicum, or containing an ultraviolet dye and up to 18% oleoresin capsicum, by a person in the protection of a person or property under circumstances that would justify the person's use of physical force.

The code also prohibits a person from selling a self-defense spray or foam device to a minor. A person who violates this provision is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both.

The code further provides that, if a person uses a self-defense spray or foam device during the commission of a crime to eject, release, or emit orthochlorobenzalmalononitrile or oleoresin capsicum or threatens to use a self-defense spray or foam device during the commission of a crime to temporarily or permanently disable another person, the judge who imposes sentence upon a conviction for that crime must consider the defendant's use or threatened use of the self-defense spray or foam device as a reason for enhancing the sentence.

FISCAL IMPACT:

To the extent that expanding the definition of self-defense spray leads to an increase in the number of violations, House Bill 5694 could have an indeterminate fiscal impact on the state and on local units of government.

New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction.

The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ 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.