

Legislative Analysis



AIR-GUN RECLASSIFICATION: REMOVE FROM DEFINITION OF "FIREARM"

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House Bill 5450 (reported from committee as Substitute H-2)

Sponsor: Rep. Mike Shirkey

House Bill 5749 (reported without amendment)

Sponsor: Rep. Peter Pettalia

House Bill 5750 (reported without amendment)

Sponsor: Rep. Ray A. Franz

Committee: Judiciary

First Analysis (11-5-14)

BRIEF SUMMARY: House Bills 5450 and 5750 would amend different acts to revise the definition of "firearm" to apply to types of guns that propel a projectile by an explosion. House Bill 5749 would repeal an act that prohibits unaccompanied minors from using or possessing certain BB guns outside of their property.

FISCAL IMPACT: The bills may have an impact on local corrections as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

The use of pellet guns and air-guns, as well as BB guns, by adults and youth are gaining in popularity for use in hunting small game, teaching gun safety, and also for playing airsoft games. These guns, considered to be toys, generally fire small, plastic BBs that are non-lethal. (However, the pellets can cause serious eye damage and wearing proper eye protection when operating or when near such guns is strongly advised and required in certain venues.)

The problem the bill seeks to address is that current definitions of the term "firearm" contained in several state statutes encompass pellet and air-guns and therefore subject the purchase, possession, and transportation of these guns to the same regulations and restrictions as for handguns, rifles, shotguns, and other firearms that use explosives to fire bullets. Some feel that the definition of "firearm" contained in state laws should be revised to reflect federal law, which is far less restrictive regarding air-guns.

THE CONTENT OF THE BILLS:

House Bill 5450 would amend the Michigan Handgun Act (MCL 28.421) to define "firearm" to mean any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. The bill would take effect January 1, 2015.

Currently, the term means a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air, and excludes a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BBs not exceeding .177 caliber.

House Bill 5749 would repeal Public Act 186 of 1959 (MCL 752.891-752.892), which prohibits a person under 18 years of age from using or possessing any handgun designed and manufactured exclusively for propelling BBs not exceeding .177 caliber by means of spring, gas, or air, outside the minor's home unless accompanied by an adult. The penalty for a violation is a misdemeanor punishable by no more than 90 days in jail and/or a fine of not more than \$500; this provision would be repealed as well.

House Bill 5750 revises the definition of "firearm" contained in Public Act 10 of 1952 (MCL 752.841), which pertains to injuring or killing someone in a shooting accident in a manner similar to the definition change in House Bill 5450. The bill, which would take effect January 1, 2015, would amend the act to define "firearm" to mean, for purposes of the act, any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

Currently, "firearm" is defined, for purposes of the act, to mean any weapon or device from which is propelled any missile, projectile, bullet, shot, pellet or other mass by means of explosives, compressed air or gas, or by means of spring, levers or other mechanical device.

A person who injures or kills another by discharging a firearm is required under the act to stop at the scene, provide name and address to the injured person or member of that person's party, render assistance in obtaining medical aid, and report the incident to law enforcement. A person who violates any of the act's provisions could be fined not more than \$100 and costs of prosecution, and/or imprisoned in the county jail for not more than 90 days. In addition to any fine or imprisonment, the court may suspend the hunting privileges of such person for a period of not to exceed three years from the date of conviction.

BACKGROUND INFORMATION:

The bills are part of a larger package that includes Senate Bills 964-966 and 979, which amend other statutes to align the definition of "firearm" with the federal definition; define air-guns and devices utilizing springs as "pneumatic guns"; allow local governments to, with some restrictions, regulate the use of pneumatic guns; and, only for purposes under the Natural Resources and Environmental Protection Act, treat pneumatic guns (other than paintball guns) as firearms. Those bills have passed the Senate and are pending House committee action.

FISCAL INFORMATION:

The fiscal impact of **House Bill 5450** to the state and/or local units of government will depend on the number of offenses there are related to these weapons under the new definition. Any increases or decreases in penal fine revenues would affect funding for local libraries, which are the constitutionally designated recipients of those revenues.

Depending on the number of people that were actually charged for using or possessing the types of guns now excluded from the definition of "firearm" under Public Act 10 of 1952 by **House Bill 5749** or under the provisions repealed by **House Bill 5749**, the bills 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. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

Michigan is considered to be the third-most restrictive state regarding the classification of air-guns. Since the current definition of "firearms" encompasses air-guns, not only state regulations regarding licensure and permits are triggered, but also federal commerce laws. For example, air-guns can only be purchased legally through a federally-licensed gun dealer. Passage of the bills would bring Michigan in line with federal standards and most other states.

The guns the bills apply to are considered to be toys and shoot lightweight, non-lethal plastic pellets or small BBs. They are required to have orange tips on the barrels to distinguish them from firearms that use explosives (such as gun powder) to fire metal bullets. When proper protocols are followed and safety equipment such as eye guards are worn, they are considered safe. However, a person would still likely be subject to criminal penalties if using an air-gun to threaten another person or in the commission of a crime.

Against:

Several articles and blogs available on the Internet confirm that use of airsoft guns are growing in popularity. However, where adult airsoft games as a sport are typically played on fields where rules apply and safety controllable, concern is growing for youths who play in backyards, public parks, or in the streets. Several articles report police responding to reports of a person with a gun only to find youths engaged in airsoft gun play. The concern is that these guns, though considered as "toys" by many, are virtually indistinguishable from their more lethal counterparts. Though required to have an orange plastic tip on the barrel, some owners paint over the orange tip to make the gun look more real. And, some say the orange tip is not always easy to see.

The concern, therefore, is that unsupervised youth, or anyone using or transporting an airsoft gun outside of a field or building where organized games are held, could be mistaken by law enforcement, property owners, or other persons with access to a gun as someone about to commit, or in the process of committing, a crime. Some feel it is just a matter of time before a police officer or concerned citizen shoots and injures or kills a child or person carrying only an air-gun. Further, because the plastic pellets fired by air-guns can cause serious eye trauma, including blindness, some have expressed concerns that innocent bystanders or passers-by could be injured by kids and adults "playing" airsoft games.

POSITIONS:

A representative of the National Rifle Association (NRA) testified in support of the bills. (9-18-14)

A representative of the Michigan United Conservation Clubs (MUCC) testified in support of the bills. (10-18-14)

The Michigan State Police indicated a neutral position on the bills. (9-18-14)

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