

SENATE BILL No. 29

January 19, 2011, Introduced by Senator HANSEN and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 224a (MCL 750.224a), as amended by 2006 PA 457.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 224a. (1) Except as otherwise provided in this section, a
2 person shall not sell, offer for sale, or possess in this state a
3 portable device or weapon from which an electrical current,
4 impulse, wave, or beam may be directed, which current, impulse,
5 wave, or beam is designed to incapacitate temporarily, injure, or
6 kill.

7 (2) This section does not prohibit any of the following:

8 (a) The possession and reasonable use of a device that uses
9 electro-muscular disruption technology by any of the following

1 individuals, if the individual has been trained in the use,
2 effects, and risks of the device, and, **IN THE CASE OF AN INDIVIDUAL**
3 **DESCRIBED IN SUBPARAGRAPHS (i) TO (xi)**, is using the device while
4 performing his or her official duties:

5 (i) A peace officer.

6 (ii) An employee of the department of corrections who is
7 authorized in writing by the director of the department of
8 corrections to possess and use the device.

9 (iii) A local corrections officer authorized in writing by the
10 county sheriff to possess and use the device.

11 (iv) An individual employed by a local unit of government that
12 utilizes a jail or lockup facility who has custody of persons
13 detained or incarcerated in the jail or lockup facility and who is
14 authorized in writing by the chief of police, director of public
15 safety, or sheriff to possess and use the device.

16 (v) A probation officer.

17 (vi) A court officer.

18 (vii) A bail agent authorized under section 167b.

19 **(viii) AN INDIVIDUAL WHO HAS BEEN ISSUED A CONCEALED PISTOL**
20 **LICENSE ISSUED UNDER SECTION 5B OF 1927 PA 372, MCL 28.425B, AND**
21 **HAS IN HIS OR HER POSSESSION SPECIFIC WRITTEN AUTHORIZATION FROM A**
22 **LICENSED BAIL AGENT APPOINTING HIM OR HER AS THAT BAIL AGENT'S**
23 **FUGITIVE RECOVERY REPRESENTATIVE FOR THE SPECIFIC DEFENDANT BEING**
24 **SOUGHT AND BEARING AN EXPIRATION DATE THAT IS NOT LATER THAN**
25 **DECEMBER 31 OF THE YEAR IN WHICH THE AUTHORIZATION WAS EXECUTED OR**
26 **THE NAMED DEFENDANT IS APPREHENDED, WHICHEVER OCCURS FIRST.**

27 (ix) ~~(viii)~~—A licensed private investigator.

1 (x) ~~(ix)~~—An aircraft pilot or aircraft crew member.

2 (xi) ~~(x)~~—An individual employed as a private security police
3 officer. As used in this subparagraph, "private security police"
4 means that term as defined in section 2 of the private security
5 business and security alarm act, 1968 PA 330, MCL 338.1052.

6 **(xii) AN INDIVIDUAL WHO HOLDS A VALID LICENSE TO CARRY A
7 CONCEALED PISTOL UNDER SECTION 5B OF 1927 PA 372, MCL 28.425B.**

8 (b) Possession solely for the purpose of delivering a device
9 described in subsection (1) to any governmental agency or to a
10 laboratory for testing, with the prior written approval of the
11 governmental agency or law enforcement agency and under conditions
12 determined to be appropriate by that agency.

13 (3) A manufacturer, authorized importer, or authorized dealer
14 may demonstrate, offer for sale, hold for sale, sell, give, lend,
15 or deliver a device that uses electro-muscular disruption
16 technology to a person authorized to possess a device that uses
17 electro-muscular disruption technology and may possess a device
18 that uses electro-muscular disruption technology for any of those
19 purposes.

20 (4) A person who violates ~~this section~~ **SUBSECTION (1)** is
21 guilty of a felony punishable by imprisonment for not more than 4
22 years or a fine of not more than \$2,000.00, or both.

23 **(5) AN AUTHORIZED DEALER OR OTHER PERSON WHO SELLS A DEVICE
24 THAT USES ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY TO AN INDIVIDUAL
25 DESCRIBED IN SUBSECTION (2) (A) (xii) SHALL VERIFY THE INDIVIDUAL'S
26 IDENTITY AND VERIFY THAT THE INDIVIDUAL HOLDS A VALID CONCEALED
27 PISTOL LICENSE ISSUED UNDER SECTION 5B OF 1927 PA 372, MCL 28.425B,**

1 AND SHALL PROVIDE TO THE INDIVIDUAL PURCHASING THE DEVICE, AT THE
2 TIME OF THE SALE, TRAINING ON THE USE, EFFECTS, AND RISKS OF THE
3 DEVICE. A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A
4 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 30 DAYS OR
5 A FINE OF NOT MORE THAN \$500.00, OR BOTH.

6 (6) BOTH OF THE FOLLOWING APPLY TO THE USE OF A DEVICE THAT
7 USES ELECTRO-MUSCULAR DISRUPTION TECHNOLOGY BY AN INDIVIDUAL
8 DESCRIBED IN SUBSECTION (2) (A) (xii) :

9 (A) THE INDIVIDUAL SHALL NOT USE THE DEVICE AGAINST ANOTHER
10 PERSON UNLESS THE DEVICE IS REASONABLY USED IN THE PROTECTION OF
11 PERSON OR PROPERTY UNDER CIRCUMSTANCES THAT WOULD JUSTIFY THE
12 INDIVIDUAL'S USE OF PHYSICAL FORCE. AN INDIVIDUAL WHO VIOLATES THIS
13 SUBDIVISION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
14 FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR
15 BOTH.

16 (B) IF THE INDIVIDUAL USES, OR THREATENS TO USE, THE DEVICE
17 DURING THE COMMISSION OF A CRIME TO TEMPORARILY OR PERMANENTLY
18 DISABLE ANOTHER PERSON, THE JUDGE WHO IMPOSES SENTENCE UPON A
19 CONVICTION FOR THAT CRIME SHALL CONSIDER THE DEFENDANT'S USE OR
20 THREATENED USE OF THE DEVICE AS A REASON FOR ENHANCING THE
21 SENTENCE.

22 (7) ~~(5)~~—As used in this section:

23 (a) "A device that uses electro-muscular disruption
24 technology" means a device to which ~~all~~**BOTH** of the following
25 apply:

26 (i) The device is capable of creating an electro-muscular
27 disruption and is used or intended to be used as a defensive device

1 capable of temporarily incapacitating or immobilizing a person by
2 the direction or emission of conducted energy.

3 (ii) The device contains an identification and tracking system
4 that, when the device is initially used, dispenses coded material
5 traceable to the purchaser through records kept by the
6 manufacturer, -

7 ~~—— (iii) The~~ **AND THE** manufacturer of the device has a policy of
8 providing ~~the~~ **THAT** identification and tracking information
9 ~~described in subparagraph (ii)~~ to a police agency upon written
10 request by that agency. **HOWEVER, THIS SUBDIVISION DOES NOT APPLY TO**
11 **A LAUNCHABLE DEVICE THAT IS USED ONLY BY LAW ENFORCEMENT AGENCIES.**

12 (b) "Local corrections officer" means that term as defined in
13 section 2 of the local corrections officers training act, 2003 PA
14 125, MCL 791.532.

15 (c) "Peace officer" means any of the following:

16 (i) A police officer or public safety officer of this state or
17 a political subdivision of this state, including motor carrier
18 officers appointed under section 6d of 1935 PA 59, MCL 28.6d, and
19 security personnel employed by the state under section 6c of 1935
20 PA 59, MCL 28.6c.

21 (ii) A sheriff or a sheriff's deputy.

22 (iii) A police officer or public safety officer of a junior
23 college, college, or university who is authorized by the governing
24 board of that junior college, college, or university to enforce
25 state law and the rules and ordinances of that junior college,
26 college, or university.

27 (iv) A township constable.

1 (v) A marshal of a city, village, or township.

2 (vi) A conservation officer of the department of natural
3 resources or the department of environmental quality.

4 **(vii) A RESERVE PEACE OFFICER, AS THAT TERM IS DEFINED IN**
5 **SECTION 1 OF 1927 PA 372, MCL 28.421.**

6 **(viii)** ~~(vii)~~—A law enforcement officer of another state or of a
7 political subdivision of another state or a junior college,
8 college, or university in another state, substantially
9 corresponding to a law enforcement officer described in
10 subparagraphs (i) to ~~(vi)~~ **(vii)** .

11 **(ix)** ~~(viii)~~—A federal law enforcement officer.

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No. 30

14 of the 96th Legislature is enacted into law.