

Legislative Analysis



PEPPER SPRAYS AND FOAMS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6053 (Proposed Floor Substitute H-2)

Sponsor: Rep. Hugh Crawford

1st Committee: Judiciary

2nd Committee: Tourism, Outdoor Recreation and Natural Resources

Revised First Analysis (7-1-10)

BRIEF SUMMARY: Currently, members of the general public in Michigan may only use a "self-defense spray or foam device" that contains no more than two percent oleoresin capsicum or OC. As introduced, the bill would have allowed concealed pistol license (CPL) holders to use devices containing up to 10 percent OC, provided they had received training in the use of this type of device and carried proof of their training with them. The H-1 Substitute reported from committee, however, inadvertently would make it a misdemeanor for members of the general public (and for certain non-MCOLES-certified sheriff and police department employees) to use any type of "self-defense spray or foam device." An H-2 Floor Substitute has been offered to allow any member of the general public, whether licensed to carry a concealed pistol or not, to use a self-defense spray or foam device containing not more than 10 percent OC, and to specify the penalty for selling a self-defense spray or foam device to a minor.

FISCAL IMPACT: The bill would have no significant fiscal impact to the state or local units of government.

THE APPARENT PROBLEM:

In recent years, a variety of pepper spray devices have been marketed to the general public as a method of self-defense that is less deadly than a firearm. Reportedly, Michigan's laws concerning pepper sprays and foams allowed for civilian (as opposed to law enforcement) use are stricter than the laws of many other states. Here, members of the general public may only use a pepper spray or foam device that contains no more than two percent oleoresin capsicum (sometimes called OC, a derivative of hot peppers).

Because additional products are available in other states, some people think that Michigan's pepper spray laws are too restrictive. The main proponent of the bill at the committee hearing was Theron E. Hughes of Ypsilanti, Michigan, who goes by the name "Thayrone" in his work as a radio disc jockey and talk show host. Hughes testified that after being given a pepper spray product called the "Kimber Guardian Angel"—which the manufacturer says has been renamed "PepperBlaster" for marketing purposes—he found out that it was unlawful for him to use it in Michigan. According to Hughes, this product is an elegant, non-lethal self-defense tool that should be available to Michigan residents. Women in general, and female college students in particular, he says, could benefit from being able to carry and use this particular device. He implied that he could start walking his dogs again, despite a mean dog in the area that has attacked his dogs in the past, if this product were made available.

To make this and similar products lawful in Michigan, it has been suggested that the Michigan Penal Code be amended to allow any member of the general public to use pepper

sprays or foams containing not more than 10 percent OC, rather than just products with not more than two percent OC.

THE CONTENT OF THE BILL:

As introduced, the bill would have amended the Michigan Penal Code (MCL 750.224d) to do the following things:

- Allow a concealed pistol licensee to use a self-defense spray or foam containing ***not more than 10 percent*** OC if the person has been trained in the device's use, risks, and effects, and possesses evidence of that training while carrying the device. (Currently, members of the general public, whether concealed pistol licensees or not, are limited to using pepper sprays or foams with ***not more than two percent*** oleoresin capsicum.) Persons who hold concealed pistol licenses as of the bill's effective date would not need to receive training until they renewed their licenses.)
- Legalize the carrying of a self-defense spray or foam device, openly or concealed, including in a motor vehicle. The term "self-defense spray or foam" has a specific meaning described below (generally speaking, it refers to one form of tear gas in a container of 35 grams or less or a pepper spray or foam in a solution of not more than 10 percent oleoresin capsicum or OC).
- Specify that the penalty for selling a self-defense spray or foam to a minor, currently classified as a misdemeanor, is imprisonment for not more than 90 days, a fine of not more than \$500, or both. This would not change current law. The penalty that the bill would add is the penalty that currently applies to misdemeanors for which no penalty is specified (MCL 750.504).

At a House Tourism committee meeting held on June 1, 2010, it appeared that the committee decided that the bill should allow anyone, not just concealed pistol license holders, to use OC sprays and foams not containing more than 10 percent OC. However, the Substitute H-1 drafted at the committee hearing inadvertently removed all authorized uses of self defense sprays and foams in Michigan by persons other than certain law enforcement and corrections officers and a few others.

An H-2 Substitute has been offered on the House Floor that would allow any member of the general public to use a self-defense spray or foam device that contains no more than 10 percent OC. No training would be required. Specifically, the bill permits "the reasonable use of a self-defense spray or foam device containing not more than 10 percent 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 H-2 substitute would also specify that the penalty for selling a self-defense spray or foam to a minor, currently classified as a misdemeanor, is imprisonment for not more than 90 days, a fine of not more than \$500, or both. As described above, this would not change the current penalty for selling this type of device to a minor, because this is the penalty that currently applies to misdemeanors for which no penalty has been specified (MCL 750.504).

ARGUMENTS:

For:

Some people say that Michigan's law on the use of self-defense sprays and foams is inappropriately strict and argue that it should be relaxed so that a greater variety of less-lethal self-defense products are available for purchase and use by members of the general public. Further, some of the 10 percent OC products on the market shoot with such force that the person using it is less likely to suffer the ill-effects of the product from "blow back" as can happen with certain products currently available. In testimony before the House committee, as noted earlier, a proponent of the bill argued that women in general, and female college students in particular, could benefit from being able to carry and use this device to protect their persons and property.

Against:

Is this bill really necessary? Some people say that it is not, because the OC percentage of a pepper spray or foam product is not a particularly effective way of measuring its potency. Pepper spray products, even those with the same OC percentage, are not all created equal. An OC percentage says how much of the overall product is made up of OC, but does necessarily indicate how "hot" the product is. Some people say a product's heat is best measured by Scoville Heat Units, which reflect its capsaicin content; this content may vary even among two products with the same OC percentage. A two percent OC product could be hotter than a 10 percent OC product if the OC in the 10 percent product was low in capsaicin.

At least one product the bill would legalize for general use may present safety risks beyond the general safety issues posed by all peppers sprays (such as the risk to persons with asthma, the risk that a sprayed product may hit unintended victims, or that the product will be used inappropriately; for example, sometimes a spray used inside a building is spread to other people via the building's heating and cooling system.) One pepper spray device that would be legalized by the bill is designed to look like a handgun and shoots a concentrated stream of OC solution at 270 miles per hour, according to its manufacturer. Is it a good idea to legalize products that shoot a concentrated solution at such a high speed and that are intended be aimed at a person's face? Could the use of such products lead to accidental blindings?

POSITIONS:

Theron E. and Linda H. Hughes of Ypsilanti, Michigan indicated support for the bill. (6-1-10)

The Department of State Police indicated a neutral position on the bill. (6-1-10)

Legislative Analyst: Shannan Kane
Fiscal Analyst: Bob Schneider

■ 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.