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REPEAL EXPLOSIVES ACT OF 1970

House Bill 4523 (reported from committee w/o amendment)
Sponsor: Rep. Steven Johnson

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

House Bill 4524 (reported from committee w/o amendment)
Sponsor: Rep. Scott VanSingel

House Bill 5137 (reported from committee w/o amendment)
Sponsor: Rep. Steven Johnson

House Bill 5138 (reported from committee w/o amendment)
Sponsor: Rep. Steven Johnson

Committee: Judiciary
Complete to 11-27-17

BRIEF SUMMARY: House Bill 4523 would repeal the Explosives Act of 1970, Act 202 of 1970; House Bill 4524 would amend the Revised Judicature Act to update language and references to account for the repeal of the Explosives Act; House Bill 5137 would amend the Michigan Penal Code by adding Section 204b, to apply the federal standards for explosives, and Section 204c, to prohibit a person from handling explosive materials while under the influence of an alcoholic liquor or controlled substance; and House Bill 5138 would amend the sentencing guidelines in the Code of Criminal Procedure to include a violation of the newly created Section 204b.

FISCAL IMPACT: House Bill 4523 would have a revenue-neutral fiscal impact on local law enforcement agencies; House Bill 4524 would have no fiscal impact on the state or on local units of government; House Bill 5137 would have an indeterminate fiscal impact on state and local correctional systems that would depend on the number of persons convicted under provisions of the bill; and House Bill 5138 would amend the sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

More information is found below under “Fiscal Information.”

THE APPARENT PROBLEM:

Michigan’s current laws regulating explosives (MCL 29.41 through 29.55) went into effect in 1971 and have not been amended since. Current practices do not require a background check before handling dangerous explosives, and a permit fee is just \$1. However, federal regulations have changed over time and require an individual to undergo a more thorough application process, including stricter background checks, before being allowed to gain a permit to handle explosives. The sponsors of these bills believe that repealing Michigan’s

current laws and adopting the federal regulations regarding explosives would better serve Michigan and protect against the unsafe handling of, and permitting for, explosives.

THE CONTENT OF THE BILLS:

House Bill 4523

House Bill 4523 would repeal the Explosives Act of 1970, Act 202 of 1970, which currently requires certain permitting, storage, and handling procedures for such explosives as dynamite, blasting powder, nitroglycerine, and TNT. The repeal would take effect 90 days after the effective date of HB 4523. (MCL 29.41 through 29.55)

House Bill 4524

House Bill 4524 would amend the Revised Judicature Act to update language and references to account for the repeal of the Explosives Act. Currently, a defendant is jointly and severally liable for causing personal injury, property damage, or wrongful death by handling an explosive under the Explosives Act while under the influence of intoxicating liquor or a narcotic. Because HB 4523 would repeal the Explosives Act, HB 4524 would amend its reference to that act while still holding a person liable for the conduct.

The bill also would make several editorial changes for clarity. HB 4524 is tie-barred to HB 4523, which means that HB 4524 would not be enacted unless HB 4523 is enacted.

MCL 600.6312

House Bill 5137

House Bill 5137 would amend the Michigan Penal Code by adding Section 204b, to apply the federal standards for explosives, and Section 204c, to prohibit a person from handling explosive materials while under the influence of an alcoholic liquor or controlled substance.

Section 204b would specify that a person could not import, manufacture, distribute, or store explosive materials unless that activity complies with Sections 841 through 848 (within Chapter 40 - Importation, Manufacture, Distribution, and Storage of Explosive Materials) of Title 18 (Crimes and Criminal Procedure) of the United States Code (USC), and with Part 555 (Commerce in Explosives) of Title 27 (Alcohol, Tobacco Products, and Firearms) of the Code of Federal Regulations (CFR). “Explosive materials” would be defined in 18 USC §841, which includes explosives, blasting agents, and detonators.

Some notable differences and similarities of the current Explosives Act and the federal regulations include:

- Gaining a permit or license:
 - Under the Explosives Act, an application is required with the name, address, date of birth, Social Security number, and signature of the applicant, as well as an affidavit of intent for use of explosives, whether the applicant has been

convicted of a felony within 5 years, and a \$1.00 fee (MCL 29.44). The permit is valid for 1 year (MCL 29.46).

- Under the United States Code, the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person, are required. Additionally, each applicant pays a fee set by the Attorney General, which is no more than \$50.00 for a limited permit and \$200.00 for any other license or permit. The permit would have to be renewed every 3 years, with an additional renewal fee of half of the original fee. (§843(a))
- Under the Code of Federal Regulations, each applicant pays a \$200.00 fee for a 3-year license, with a \$100.00 renewal fee, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). (§555.42)
- Under the United States Code, a person may not obtain a permit if the person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for more than 1 year; has been committed to a mental institution or declared mentally disabled by a court; or has been dishonorably discharged from the armed forces. (§843(b)(1))
- Both the Explosives Act and the United States Code provide for a hearing and appeal process for denial or revocation of a permit or license. (§843(e))
- The United States Code provides for inspection by the Attorney General or Secretary during business hours. (§843(f))
- The Explosives Act expressly exempts a permit from having to be with explosives at a storage site (MCL 29.43(b)), while the United States Code specifies that licenses and user permits must be kept posted and available for inspection on the premises covered by the license and permit. (§843(g))

Under HB 5137, a violation of Section 204b would be a misdemeanor punishable by imprisonment for up to 2 years, a fine of up to \$10,000, or both, and would not preclude a conviction or sentence for a violation of any other applicable law. As a result, even though the bill would require an individual to apply for an explosives permit under the federal guidelines, the bill would allow for an individual to be prosecuted under Michigan law for not properly following the federal guidelines. Currently, under 18 USC §844, a person who violates the act could be fined an unspecified amount, imprisoned up to 20 years, or both, while under 27 CFR 555.161, a person who violates the act could be fined up to \$10,000, imprisoned for up to 10 years, or both.

HB 5137 also would add Section 204c to prohibit a person from handling any explosive materials while under the influence of an alcoholic liquor or controlled substance. A

violation of this section would be a misdemeanor punishable by imprisonment for up to 1 year, a fine of up to \$500, or both.

Section 204c would use the definition of “alcoholic liquor” contained in the Michigan Vehicle Code (MCL 257.1d), which is any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in MCL 436.1105 of the Michigan Liquor Control Code (any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, containing 1/2 of 1% or more of alcohol by volume, that are fit for use for food or beverage purposes as defined and classified by the Liquor Control Commission).

Section 204c would use the definition of “controlled substance” contained in the Public Health Code (MCL 333.7104), which is a drug, substance, or immediate precursor included in schedules 1 through 5 in MCL 333.7211 through 333.7220.

HB 5137 would take effect 90 days after it is enacted.

Proposed MCL 750.204b and 750.204c

House Bill 5138

House Bill 5138 would amend the sentencing guidelines in the Code of Criminal Procedure to include a violation of the newly created Section 204b, above.

The bill would add a Class “G” public safety sentencing guideline for the crime of importing, manufacturing, distributing, or storing explosives in violation of certain federal laws and regulations, which would include a maximum imprisonment sentence of 2 years.

The bill also would amend the sentencing guideline for a violation of MCL 750.212a. Currently, the sentence is for an explosives violation involving a vulnerable target *causing death or injury*. The bill would remove the italicized words, allowing punishment for any explosives violation involving a vulnerable target, and not just those that result in death or injury.

HB 5138 is tie-barred to HB 5137, which means that HB 5138 would not be enacted unless HB 5137 is enacted. HB 5138 would take effect 90 days after it is enacted.

MCL 777.16k

FISCAL INFORMATION:

House Bill 4523

House Bill 4523 would have a revenue-neutral fiscal impact on local law enforcement agencies. Pursuant to the Explosives Act of 1970, Act 202 of 1970, local law enforcement agencies are allowed to charge a \$1.00 administrative fee to process applications for the purchase and possession of explosives. This bill would repeal the Explosives Act of 1970,

and therefore local law enforcement agencies would no longer have to process and issue permits.

Depending on the number of people who were actually charged under provisions of the bill that are being eliminated, the bill 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. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues, which would decrease funding for local libraries, the constitutionally designated recipients of those revenues.

House Bill 4524

HB 4524 would have no fiscal impact on the state or on local units of government.

House Bill 5137

HB 5137 would have an indeterminate fiscal impact on state and local correctional systems that would depend on the number of persons convicted under provisions of the bill. New misdemeanor convictions resulting in imprisonment for 1 year or more would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. New misdemeanor convictions resulting in imprisonment for less than 1 year would result in increased costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on local court funding units that would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bill 5138

HB 5138 would amend the sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Proponents of the bills argue that the current Michigan explosive laws are outdated and unsafe because background checks are not conducted. The federal permitting process, with fingerprinting and background checks, is more thorough in determining an applicant's eligibility to handle explosives. Additionally, a federal permit is still needed for a Michigander to transport explosives in the state. As a result, supporters of the bills believe that Michigan would be safer by only following the federal standards regarding explosives.

Against:

A concern was raised during committee that the wording in House Bill 5137 conflicts with current Michigan standards regarding the designation of crimes as felonies or misdemeanors. The bill would make a violation a misdemeanor punishable by up to 2 years of imprisonment. However, under Michigan law, a felony is any violation that is punishable by imprisonment for more than 1 year.

Response:

Supporters of the bill responded that the current federal regulations define a violation as a misdemeanor with the same punishment.

According to the Michigan Department of Corrections, a misdemeanor is defined as “a crime less serious than a felony for which the maximum sentence is *usually* not more than 1 year in a county jail. A sentence usually involves probation, jail time, a fine, or a combination of any or all of these three. *Except in certain specific instances*, persons convicted of a misdemeanor cannot be sentenced to prison.”¹ The Michigan Code of Criminal Procedure defines a misdemeanor as “a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.”² Using these definitions, Michigan does, in some circumstances, charge individuals with “high misdemeanors,” or a misdemeanor that is punishable by over 1 year in prison.³

POSITIONS:

Representatives from the Michigan State Police testified in support of the bills. (10-31-17)

Representatives from the Prosecuting Attorneys Association indicated support for the bills. (10-31-17)

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

¹ See <http://www.michigan.gov/corrections/0,4551,7-119--17490--00.html> (emphasis added with *italics*).

² MCL 761.1(1)(n).

³ High misdemeanors include indecent exposure (MCL 750.335a(2)(b)) and negligent homicide (MCL 324.80172).