

FIREARM DEFINITION/PNEUMATIC GUNS

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<http://www.house.mi.gov/hfa>

House Bill 4151 as enacted
Public Act 21 of 2015
Sponsor: Rep. Peter Pettalia

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

House Bill 4152 as enacted
Public Act 22 of 2015
Sponsor: Rep. Jason M. Sheppard

House Bill 4155 as enacted
Public Act 26 of 2015
Sponsor: Rep. Triston Cole

House Bill 4153 as enacted
Public Act 23 of 2015
Sponsor: Rep. Ray A. Franz

House Bill 4156 without amendment
Public Act 25 of 2015
Sponsor: Rep. Tom Barrett

House Bill 4154 as enacted
Public Act 24 of 2015
Sponsor: Rep. Brett Roberts

Senate Bill 85 as enacted
Public Act 29 of 2015
Sponsor: Sen. Dave Hildenbrand

House Committee: Judiciary
Senate Committee: Judiciary
Complete to 10-6-16

BRIEF SUMMARY: Prior to the enactment of these bills, the definition of "firearm" differed somewhat among several statutes. The bill package aligns the definition of "firearm" in these statutes with the federal definition and no longer treats pneumatic guns (also known as "air-soft guns") and pellet guns as firearms, with some exceptions. With one exception, the bills took effect July 1, 2015; House Bill 4151 took effect May 12, 2015.

The bills revise the definition of "firearm" to mean, unless otherwise specifically defined in statute, *any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.*

In addition, House Bill 4151 repeals an act that prohibited unaccompanied minors from using or possessing certain BB guns outside of their property. House Bill 4155 makes it a felony offense to use a pneumatic gun in the commission of a felony, makes it a crime to transport certain types of pneumatic guns except as specifically allowed, and defines the term "weapon."

Senate Bill 85 amends an act which prohibits local units of government from taxing or regulating the ownership of pistols or other firearms, and does the following:

- ❖ Extends the authority of the act to include pneumatic guns.
- ❖ Defines the terms "firearm" and "pneumatic gun."
- ❖ Expands current provisions regarding the authority of local units of government over pistols or firearms to include pneumatic guns.

- ❖ Allows a local government to require a minor be under parental supervision when using a pneumatic gun (unless the minor has permission to do so on private land).
- ❖ Allows a local government to prohibit brandishing a pneumatic gun.
- ❖ Allows a city or charter township to prohibit the discharge of a pneumatic gun in heavily populated areas.

FISCAL IMPACT: There would be no fiscal impact on the Department of Natural Resources but the bill package could have an impact on local and state corrections and the judiciary. See *Fiscal Information* below.

THE APPARENT PROBLEM:

The use of pellet guns and air-guns, as well as BB guns, by adults and youth have been 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 or metallic 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.) But under Michigan law, air-guns (also known as "pneumatic guns") have long been treated like firearms, even though most states either treat them as toys or don't regulate them at all. In addition, the definition of "firearm" in various Michigan statutes have differed from one other and also from federal law.

In the 2013-2014 Legislative Session, a package of Senate and House bills intended to align the treatment of pneumatic guns and definition of "firearm" with federal law was introduced. Though several Senate bills did reach the governor, the House bills did not make it through the process before the Legislature ended its two-year cycle. The governor then vetoed the bills that had reached his desk on the grounds the package was incomplete, necessitating reintroduction of the bills this session.

The problem the bills 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.

In a related matter, legislation is also needed to deal with the authority of local governments to regulate, or not regulate, firearms and handguns. In general, state law preempts local governments from enacting local ordinances that would restrict the ownership, registration, purchase, sale, transfer, transportation, or possessions of pistols, firearms, and ammunition. Apparently, the restriction was placed in statute more than two decades ago to prevent a patchwork quilt of local gun laws that could be confusing for the public and make such things as hunting difficult. In particular, since pneumatic guns would no longer fall within the definition of "firearm," legislation is needed to address the authority of local governments to regulate these types of guns.

THE CONTENT OF THE BILLS:

As noted earlier, several of the bills revise the definition of "firearm" to mean, unless otherwise specifically defined in statute, ***any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.***

House Bill 4151 repeals Public Act 186 of 1959 as of July 1, 2015. Public Act 186 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 (MCL 752.891-752.892). 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 was repealed as well.

House Bill 4152 amends Chapter 1 of the Revised Statutes of 1846, which defines certain terms used in the compiled laws of Michigan (MCL 8.3t). The bill replaces the current definition of "firearm" with the definition described above. (Currently, the term "firearm," unless specifically defined in statute, means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BBs not exceeding .177 caliber by means of spring, gas, or air.)

House Bill 4153 revises the definition of "firearm" contained in Public Act 10 of 1952, which pertains to discharging a firearm injuring or killing someone (MCL 752.841). The bill defines "firearm" as described above. 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.]

House Bill 4154 amends Part 401 (Wildlife Conservation) and Part 435 (Hunting and Fishing Licensing) of the Natural Resources and Environmental Protection Act (MCL 324.40102 et al.) to delete the current definition of "firearm" and replace it with the definition described above. However, for the purpose of this act, a *pneumatic gun* (other than a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact) would be considered a firearm.

Under the bill, the term *pneumatic gun* means that term as defined in Senate Bill 85—meaning 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.

Further, Part 401 specifies that an individual shall not hunt *or discharge a firearm* within 150 yards of an occupied building, dwelling, house, residence, or cabin, or any barn or other building used in connection with a farm operation, without obtaining the written permission of the owner, renter, or occupant of the property. The bill deletes the highlighted text and applies the prohibition to hunting as that term is defined in Section 43505. (Section 43505 defines "hunt" and "hunting" to mean to pursue, capture, shoot, kill, chase, follow, harass, harm, rob, or trap a wild animal, or to attempt to engage in such an activity.)

Additionally, the bill deletes the current definition of “unloaded” contained in Section 40111 and instead defines the term to mean *that the firearm does not have ammunition in the barrel, chamber, cylinder, clip, or magazine when the barrel, chamber, cylinder, clip, or magazine is part of or attached to the firearm.*

(Currently, Part 401 defines "firearm" as a weapon from which a dangerous projectile may be propelled by using explosives, gas, or air. Part 435 defines "firearm" as a weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion. Both definitions exclude a smooth bore rifle or handgun designed and manufactured exclusively for propelling BBs not exceeding .177 caliber by means of a spring, air, or gas; the bill revises these definitions of "firearm" as described above.)

House Bill 4155 amends the Michigan Penal Code (MCL 750.222 et al.) to revise the definition of "firearm" to mean the term as described above and to make other changes.

Currently, it is a five-year felony to go armed with a firearm or deadly weapon or instrument (such as a pistol, dagger, razor, or certain knives) with intent to use it unlawfully against a person. The bill applies the prohibition also to "a pneumatic gun." The term "pneumatic gun" would mean that term as defined in Senate Bill 85—meaning 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.

In addition, the bill makes carrying or possessing a pneumatic gun and using it in the furtherance of committing or attempting to commit a felony (with some listed exceptions) a felony with a mandatory punishment of imprisonment for two years. A second conviction is punished by imprisonment for five years and subsequent convictions would be punishable by imprisonment for 10 years. (A term of imprisonment imposed under this provision would be in addition to the sentence imposed for the conviction of the felony or attempted felony and would be served consecutively with and preceding any term of imprisonment imposed for the other felony. This penalty is identical to what is in place for

carrying or possessing a firearm when committing or attempting to commit a felony, often referred to as the “felony firearm” provision.)

Under the bill, except as otherwise permitted by law, it is a two-year misdemeanor to transport or possess on a sailboat or a motor vehicle, aircraft, motorboat, or other vehicle propelled by mechanical means, a pneumatic gun that is loaded and that expels a metallic BB or metallic pellet greater than .177 caliber.

Transporting a pneumatic gun that expels a metallic BB or metallic pellet greater than .177 caliber in a motor vehicle or self-propelled vehicle designed for land travel would be a 90-day misdemeanor, unless the pneumatic gun is unloaded and taken down, enclosed in a case, carried in the trunk of the vehicle, or inaccessible from the interior of the vehicle.

Further, certain conduct within a weapon free school zone is prohibited and a violation constitutes a felony. The bill defines the term "weapon" to include, but not be limited to, a pneumatic gun.

{Note: The bill as enrolled also includes a definition of the term “brandish” to conform to amendments to the same section of law added by Public Act 28 (enrolled House Bill 4161). See the HFA analysis of House Bills 4160 and 4161 for more information.}

House Bill 4156 amends the Michigan Handgun Act to define "firearm" as described above (MCL 28.421). 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.

Senate Bill 85 amends Public Act 319 of 1990, which prohibits local units of government from taxing or regulating the ownership of pistols or other firearms to do the following (MCL 123.1101 et al.):

Definitions

"Firearm" means any weapon that will, is designed to, or may readily be converted to, expel a projectile by action of an explosive. "Pneumatic gun" means 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 pain for the purpose of marking the point of impact.

Regulation by local governments

Currently, the act prohibits a local unit of government (defined as a city, village, township, or county) from imposing special taxation on, enacting or enforcing any ordinance or regulation pertaining to, or regulating in any other manner, the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as allowed by federal law or Michigan law. **Senate Bill 85** applies this provision also to pneumatic guns.

The act allows a local unit of government to prohibit or regulate conduct with a pistol or other firearm that is a criminal offense under state law or the transportation, carrying, or possession of pistols and other firearms by employees of a local government in the course of employment with that local government. The bill applies these provisions to a pneumatic gun, as well.

The bill also allows a local unit of government to require, within its jurisdiction, that an individual below the age of 16 who is in possession of a pneumatic gun be under the supervision of a parent, guardian, or an individual 18 years of age or older. An ordinance could not, however, regulate possession of a pneumatic gun on or within private property if the individual below the age of 16 is authorized by a parent or guardian and the property owner or legal possessor to possess the pneumatic gun.

The local unit of government could also prohibit an individual from pointing, waving about, or displaying a pneumatic gun in a threatening manner with the intent to induce fear in another individual (brandishing).

Regulation by a city or charter township

A city or charter township could prohibit the discharge of pneumatic guns in any area within its jurisdiction that is so heavily populated as to make that conduct dangerous to the inhabitants of the area. However, an ordinance could not prohibit the discharge of pneumatic guns at authorized target ranges, on other property where firearms may be discharged, or on or within private property with the permission of the owner or possessor of that property if conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

FISCAL INFORMATION:

House Bills 4152 and 4156:

Modifying the definition of "firearm" could result in a decrease in the number of firearm offenses that occur. A decrease in the number of convictions could result in lower costs for local units of government related to courts, county jails, and/or local probation supervision. 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.

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 4153** or under the provisions repealed by **House Bill 4151**, 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.

House Bills 4154 and 4155:

The bills could increase costs for state and local correctional systems. Information is not available on the number of persons that might be convicted under the provisions of the bills. New felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,400 per supervised offender per year. New misdemeanor convictions would increase 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.

The bills would increase costs on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bills affected caseloads and related administrative costs. House Bill 4154 would have no fiscal impact on the Department of Natural Resources.

Senate Bill 85 would not have a significant fiscal impact on the state or local units of government.

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 brings 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 or metallic 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. Enactment of the bills will enable residents who wish to participate in the growing popularity of airsoft gun games or to use the guns for hunting or training purposes to have greater ease and options for purchasing and transporting the guns.

The package does put important public safety measures in place. House Bill 4155 makes it a felony to use a pneumatic gun in the commission of a crime, and a person would still likely be subject to criminal penalties if using an air gun to threaten another person. In addition, the bill, which includes pneumatic guns in the definition of "weapon" in a provision prohibiting certain conduct in a weapon free school zone, also prohibits airsoft guns from being carried on school property or in vehicles used to transport children to and from school. The bill also requires a pneumatic gun used with metallic BBs or metallic

pellets greater than .117 caliber to be transported in a vehicle, boat, or other motorized vehicle in a manner similar to that required for the transport of firearms.

Against:

Several articles and blogs available on the Internet confirm that use of airsoft guns are growing in popularity. However, while adult airsoft games as a sport are typically played on fields where rules apply and safety controllable, concern is growing about 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 or remove it 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. In November of 2014, a 12-year-old boy was shot and killed by a Cleveland police officer responding to a call regarding a person waving a gun at others at a recreational center playground. The officer mistook the airsoft gun, which did not have the orange tip, for a real gun. Just three months earlier, a 22-year old man was shot and killed by officers in another Ohio town while holding an airsoft gun at a Walmart. More recently, a 13-year-old was shot and injured by police in Baltimore, Maryland, when carrying a toy pistol his mother described as a "BB gun" and a robbery suspect in Michigan who pointed an airsoft gun with the orange tip removed at a sheriff's deputy was shot and injured by the deputy when he failed to put the gun down.

Requiring only pneumatic guns used with metallic BBs or larger metal pellets to be unloaded, broken down, and enclosed in a case in the trunk similarly to firearms when being transported in a vehicle or boat may be likely to increase the type of shootings by law enforcement described above. After all, if these "toys" are that realistic, how is a law enforcement officer expected to determine in a split second if what is seen in the backseat of a vehicle is a legally transported airsoft gun because it is loaded with plastic pellets, or one unlawfully being transported because it is loaded with metal ones, or is an actual loaded firearm? What if the airsoft owner forgets which of their guns must be unloaded, broken down, and put in the trunk and so inadvertently becomes responsible for committing a misdemeanor? Some have suggested that because pneumatic guns in general are capable of causing injury, and because they look similar to real guns, that owners follow the same rules for safe transport as firearms.

Further, because the metallic pellets can break the skin and even 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. Thus, measures to lessen regulations on airsoft and pellet guns should still ensure that the safety of the public is put first.

Against:

Though House Bill 4155 makes it a criminal offense to commit a crime, or attempt to do so, with a pellet or airsoft gun, felons could lawfully purchase, possess, and use such guns under the bill. Currently, the prohibition on felons using, buying, or possessing firearms extends to pneumatic guns. Some feel this prohibition should be continued.

For:

Now that pneumatic guns will no longer be considered to be firearms, it is important to expand what is known as the "local preemption law" to include pneumatic guns. Currently, local governments are prohibited from regulating the use, sale, possession, and so on of pneumatic guns since they are still treated as firearms. Senate Bill 85 will simply continue the preemption now that pneumatic guns are no longer defined to be firearms.

However, Senate Bill 85 will allow local governments to prohibit brandishing a pneumatic gun and to require parental or adult supervision when children 15 and younger are using them. Cities and charter townships would also have the authority to prohibit the discharge of a pneumatic gun in heavily populated areas in which use of the guns would be dangerous to the inhabitants. Cities and charter townships could not prohibit the discharge of pneumatic guns on or within private property, at target ranges, or on other property where firearms are allowed to be discharged.

Against:

Some feel that Senate Bill 85, by continuing to prohibit local governments from regulating where, how, and by whom pneumatic guns may be used, could result in unnecessary injuries to others. For instance, the bill package is likely to increase ownership of pneumatic guns by adults and children. In the heat of play, it is conceivable that safety rules could be forgotten and the guns pointed in the direction of passers-by or nearby homes, resulting in injuries to other persons. The noise of the guns could also be a problem in some neighborhoods. However, only cities and charter townships would be allowed to restrict the discharge of the guns to certain less populated areas within their jurisdictions. General law townships feel they should at least have the same authority to decide where within their jurisdictions the discharge of pneumatic guns would not pose a threat to public safety. As some general law townships have populations approaching 80,000 residents, it doesn't make sense to exclude them.

In addition, though all local governments could prohibit brandishing a pneumatic gun in public, it would be nearly impossible to enforce as described in the bill. That is because the brandishing prohibition would apply only to conduct *intended* to induce fear, not conduct that *actually* induced, or was likely to induce, fear in another person.

Though touted as toys, some still have concerns, as mentioned earlier, that removing current regulations on pneumatic guns could have unintended consequences such as injuries to others, felons being able to lawfully buy and use pneumatic guns, and kids and adults being shot by law enforcement officers who mistake the "toy" guns for real ones. Thus some believe that at the least, Senate Bill 85 should allow local governments to require that pneumatic guns have the distinctive markings or devices (e.g., an orange plastic

tip) required under federal law so that law enforcement officers and members of the public can be assured that the person is not carrying a lethal firearm.

Response:

According to committee testimony, granting only cities and charter townships the ability to restrict areas where pneumatic guns could be discharged was done explicitly because general law townships govern most of the geographic area of the state and the concern was that to allow them to enact discharge ordinances could eliminate all recreational hunting across the state.

Rebuttal:

Most hunters use firearms traditionally used in hunting, not pneumatic guns. Even if all general law townships were able to enact local discharge ordinances, since the bill restricts such ordinances to heavily populated areas within the local government's jurisdiction, and since the bill only applies to the discharge of pneumatic guns, expanding such authority to all townships is likely to have little to no impact on recreational hunting.

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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.