Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

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

REVISIONS & REPEALS OF OUTDATED LAWS

House Bill 4248 (reported from committee as H-1)
Sponsor: Rep. Chris Afendoulis

House Bill 4249 (reported w/o amendment)
House Bill 4711 (reported w/o amendment)
Sponsor: Rep. Michael Webber

House Bill 4250 (reported w/o amendment)
Sponsor: Rep. Rob VerHeulen

House Bill 4709 (reported w/o amendment)
Sponsor: Rep. John Bizon, M.D.

House Bill 4710 (reported w/o amendment)
Sponsor: Rep. Andrea LaFontaine

House Bill 4501 (reported w/o amendment)
Sponsor: Rep. Kurt Heise

Committee: Criminal Justice
Complete to 7-13-15

BRIEF SUMMARY: The bills would amend numerous acts to update or eliminate existing provisions of law considered outdated or obsolete. One bill would change a misdemeanor penalty for not posting a registration card when camping on state land to a civil infraction. All of the bills will take effect 90 days after enactment.

FISCAL IMPACT: Some of the bills would have an indeterminate fiscal impact on state and local governments, as discussed in greater detail later in the analysis.

THE APPARENT PROBLEM:

Michigan is said to have more than 3,100 crimes on the books, with most of the misdemeanor offenses and almost half of the felonies found in statutes other than the Michigan Penal Code. According to a joint study conducted by the Mackinac Center and the Manhattan Institute, this problem of overcriminalization and disorganization of the criminal statutes puts Michigan residents and visitors at risk of breaking a law they aren't aware exists. Yet, the Legislature has enacted an average of 45 new crimes a year between 2008 and 2013. [Copeland, James R., Gorodetski, Isaac, and Reitz, Michael J. (October 2014) *Overcriminalizing the Wolverine State: A Primer and Possible Reforms for Michigan*. (Issue Brief No.31) Published by the Manhattan Institute and Mackinac Center.]

Critics say that besides subjecting people to criminal records, overcriminalization results in other societal costs such as increased taxes and burdens on the judicial system. Among numerous recommendations in the Mackinac Center and Manhattan Institute report is one calling for the statute books to be reviewed for redundant or obsolete laws. To that end, the House of Representatives formed a workgroup to identify outdated laws that no longer serve a purpose or old laws made redundant by newer, broader statutes. Legislation has been offered to repeal or update some of the identified statutes.

THE CONTENT OF THE BILLS:

House Bill 4248

House Bill 4248 would amend various sections of law to repeal numerous provisions and entire acts as follows:

Section 114 of the Michigan Code of Military Justice of 1980: In general, the Code applies to all members of the state military forces when not in federal service. Fighting or promoting a duel, or not informing the proper authority of a challenge to a duel being sent or about to be sent, must be punished as a court-martial directs. (MCL 32.1114)

The John C. Hertel Toxic Substance Control Commission Act: Public Act 116 of 1978, which created the State Toxic Substance Control Commission and prescribed its functions and duties, expired due to a sunset provision on December 31, 1989. (MCL 286.181-286.194)

The Hazardous Substances Act: Public Act 188 of 1965 regulates the intrastate distribution and sale of hazardous substances intended or suitable for household use and prescribes penalties. (MCL 286.451-286.462) The act declares certain substances or articles (e.g., toys) to be hazardous or banned, requires labeling of hazardous substances, prohibits certain acts, prescribes criminal penalties for violations, allows inspections of buildings or vehicles where hazardous products are manufactured or stored, and requires biannual reports of court orders or judgments issued under the act. Currently, Public Act 188 is administered by the Michigan Department of Agriculture and Rural Development in accordance with the federal Hazardous Substances Act (15 U.S.C. 1261 to 1275) and the Consumer Product Safety Act (15 U.S.C. 2051 to 2082). (MCL 286.451-286.462)

Public Act 280 of 1965: PA 280 provides for the licensing and regulation of slaughterhouses; edible rendering establishments; and wholesale fabricating, processing, and storage establishments. The act is administered by the Michigan Department of Agriculture and Rural Development, with the meat inspection program carried out in cooperative agreement with the U.S. Department of Agriculture. A violation of the act is a misdemeanor. (MCL 287.571-287.582)

Section 51508 of the Natural Resources and Environmental Protection Act: Section 51508 allows the Department of Natural Resources to call to its assistance in emergencies any able-bodied male who is at least 18 years of age; a person who refuses to assist without reasonable justification is guilty of a misdemeanor. (MCL 324.51508)

Public Act 269 of 1937: PA 269 prohibits the buying or selling, or offer thereof, of the unused portion of any non-transferable tickets issued by a railroad or steamship company or bus line that is restricted to be used by only the original ticket holder. A violation is punishable by imprisonment for not more than 90 days and/or a fine of not more than $100 per violation. (MCL 752.651-752.652)

Michigan Penal Code: The bill repeals numerous sections of the code as follows:

Chapter VI–"Advertising"
Sections 34-37: The sections prohibit advertisements in print relating to sexual diseases; publishing, distributing, or causing to be distributed such prohibited materials; makes printed advertisements containing the words "lost manhood" or "lost vitality or vigor" or similar expressions prima facie evidence of a violation; and makes a violation a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than $1,000. (MCL 750.34, 750.35, 750.36, and 750.37)

Section 39: Makes it a misdemeanor to print on cards, bills, or posters for public display or advertisement in language of immoral tendency or of ambiguous character the virtues or applications or effects of any patent or simple or compound medicine. (MCL 750.39)

Chapter IX–"Animals"
Section 52: Chapter IX prohibits the mistreatment of animals. Prohibited conduct includes using animals for fighting or for targets to shoot at; failing to provide adequate care; harassing or harming service animals such as guide dogs for the visually impaired; killing, torturing, or maiming animals; and harming police dogs or horses. *Section 52* requires, as a duty, that all sheriffs, deputy sheriffs, police officers, and public officers arrest and prosecute all persons known to have violated the prohibitions on harming animals; failure to do so is a misdemeanor. (MCL 750.52)

Chapter XIII–Bank, Deposit and Trust Companies
Section 97: Makes it a felony to make or circulate statements that are derogatory to the financial condition or solvency or financial standing of banks, saving banks, banking institutions, or trust companies doing business in the state or to counsel, aid, or induce another to start, transmit, or circulate any such statement or rumor. (MCL 750.97)
:
Chapter XXX–Duelling
Section 171 was repealed by Public Act 96 of 2010. The bill repeals the remaining sections in Chapter XXX.

Section 172: Prohibits accepting any challenge to a duel, or being present at a duel as an aid or second or surgeon, or encouraging or promoting a duel. The penalty is a misdemeanor punishable by up to one year imprisonment or a fine of not more than $1,000. (MCL 750.172)

Section 173: Prohibits the use of reproachful language in print for not accepting or fighting a duel; a violation is a misdemeanor. The penalty for a violation was raised from a maximum fine of $250 to a maximum fine of $750 by Public Act 672 of 2002.
(MCL 750.173)

Section 173a: Specifies that fencing as a sport is not a violation of the dueling prohibitions when face masks and other protective clothing designed to reduce the risk of injury are worn. (MCL 750.173a)

Chapter XXXIII–Explosives and Bombs, and Harmful Devices
Section 203: Specifies that certain federal regulations adopted in 1908 are binding on all common carriers engaged in intrastate commerce within the state which transport explosives by land. (MCL 750.203)

Chapter XLV–Homicide
Section 319: Specifies that killing someone when fighting a duel constitutes first-degree murder. (MCL 750.319)

Section 320: Specifies that a second in a duel that results in death is deemed an accessory before the fact to the crime of murder. (750.320)

Chapter XLVIII–Indecency and Immorality
Section 337: Prohibits indecent, immoral, obscene, vulgar, or insulting language in the presence or hearing of a woman or child. A violation is a misdemeanor. (MCL 750.337)

Chapter LXXII–Public Safety
Section 501: In a city with more than 50,000 residents but less than 100,000, requires written approval of 60 percent of property owners within a certain proximity before a person may build or construct a filling station or public automobile garage. A violation is a misdemeanor. The provision does not apply to any city which has a building ordinance or regulates and restricts the location of trades and industries and the location of buildings under the City and Village Zoning Act, Public Act 207 of 1921; PA 207 was repealed by Public Act 110 of 2006. (MCL 750.501)

Chapter LXXXIII–The Star Spangled Banner
Sections 541-543: Repeals the chapter, which prohibits the National Anthem to be played, sung, or rendered in any public place, at any public entertainment, or in any theatre, motion picture hall, restaurant, or café except as an entire and separate composition or number and without embellishments or other melodies; and also prohibits any part or selection to be played as a part or selection of a medley or be played in any of the places mentioned above for dancing or as an exit march. The manager or owner of any of the public places is prohibited from permitting or allowing a person to sing or render the "The Star Spangled Banner" in any of the prohibited ways. A violation of Chapter 83 is a misdemeanor. (MCL 750.541-750.543)

Except as otherwise specified, the penalty for a misdemeanor violation of any of the above offenses is punishable by a maximum of 90 days in jail and/or a maximum fine of $500.

House Bill 4249

House Bill 4249 repeals several older provisions of the Michigan Penal Code pertaining to unlawful trespass (MCL 750.546 et al.). All of the provisions were enacted in 1931 and have not been revised since 1948. The repealed sections currently prohibit the following acts of trespass:

Section 546 prohibits willful trespass related to entering the property of another and taking away such things as timber, wood, gravel, sand, turf, stone, plants, trees, roots, hay, grass, or grain that is standing, growing, or is on the land or doing the same with any of the above from a wharf, railroad depot, or warehouse having a minimum value of $5.

Section 547 prohibits the willful trespass upon a garden, orchard, or other improved land of another with the intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or vegetables that are growing or being on the land, without permission of the owner.

Section 548 prohibits a person from entering the premises of another and taking cranberries or cranberry vines from a cranberry marsh, or destroying or trampling the vines, without the permission of the owner.

Section 549 prohibits a person from entering upon huckleberry and blackberry marshes on the premises of another without the permission of the owner and carrying away or trampling or otherwise destroying the fruit or bushes.

Section 550 prohibits a person from entering, without consent of the owner, a vineyard, orchard, or garden and picking, taking away, destroying, or injuring the fruits, vegetables, or crops.

Section 551 prohibits a person from entering, without the permission of the owner, a field, yard, building, garden, or other enclosure and willfully break down, dig, destroy, take, or carry away certain medicinal plants such as ginseng seed or golden seal roots.

The penalty for a violation of any of the above is a misdemeanor punishable by no more than 90 days in jail and/or a fine of not more than $500.

House Bill 4709

House Bill 4709 amends the Michigan Penal Code (750.347). Currently, it is a misdemeanor offense for a doctor or other person to expose or keep on exhibition any deformed human being or human monstrosity; an exception is made for scientific purposes before members of the medical profession or medical classes. The bill would revise the provision to instead specify that a physician or other person who exposes or exhibits any human being who is disabled or disfigured would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of not more than $500 (underlining denotes proposed changes). The exception for presentations before medical professionals or medical classes would be retained.

The bill deletes a provision making it a misdemeanor to expose or exhibit in museums or elsewhere, diseased or deformed human bodies or human parts, or representations of the same, considered to be indecent in the case of a living person, except as used for scientific purposes before members of the medical profession or medical classes.

House Bill 4710

House Bill 4710 amends the Natural Resources and Environmental Protection Act (MCL 324.74206). Currently, when camping on state grounds under the jurisdiction of the Department of Natural Resources (but other than at state campgrounds, parks, or recreation areas), a person must post a registration card at the campsite for the duration of the stay, include the names and addresses of all persons occupying the campsite, and properly dispose of any rubbish when camp is broken. A violation is a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of not more than $100 and costs of prosecution.

The bill would change the penalty for a violation to a state civil infraction and allow the imposition of a civil fine not to exceed $500. As is currently, the person could be liable for costs incurred by the department to clean up the campsite.

House Bill 4711

House Bill 4711 would do the following:

- Amend Chapter IX of the Code of Criminal Procedure (Judgment and Sentence) to eliminate an obsolete provision requiring a prisoner to be held in a state correctional facility until any fines and costs imposed as part of the sentence are repaid in full (MCL 769.5).

- Amend the same chapter to repeal a provision allowing a court to order that a person sentenced to a state correctional facility or county jail be kept in solitary confinement and/or at hard labor (MCL 769.2).

- Repeal the Rebuilt Electric Storage Batteries Act, which prohibits rebuilding or assembling an electric storage battery from used materials and then selling the product without the word "rebuilt" branded onto the side of the container. A violation is a misdemeanor punishable by a maximum term of imprisonment of 90 days and/or a fine of not more than $100 (MCL 752.131 and 752.132).

- Repeal a provision within Chapter 171 of the Revised Statutes of 1846 (Of County Jails and the Regulation Thereof) requiring—when a prisoner is sentenced to hard labor—the keepers of the facility to keep the prisoner constantly employed everyday but Sunday, and to annually account to the county board of supervisors for the proceeds of that labor (MCL 801.9)

House Bill 4501

House Bill 4501 amends a section within the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.12m). The sentencing guidelines contain the statutory maximum years of imprisonment that can be imposed for a conviction of a felony offense,

as well as a reference to the underlying felony offense, a description of that offense, the category of the offense (e.g., property), and the felony class (e.g., Class A).

The bill deletes a reference to the maximum term of imprisonment for a felony violation of the John C. Hertel Toxic Substance Control Commission Act. The bill also deletes a reference to the maximum term of imprisonment imposed for willfully or maliciously making a derogatory statement about the financial condition of a bank. The bill is tie-barred to House Bill 4248, meaning that neither bill may take effect without the other also being enacted. [House Bill 4248, proposed Substitute H-1, would repeal numerous provisions of law–including repealing the John C. Hertel Toxic Substance Control Commission Act and the provision pertaining to the financial condition of banking institutions.]

FISCAL INFORMATION:

House Bills 4248 and 4250

The bills repeal several felonies and misdemeanors from state statutes. It is not known how often these laws are enforced, if at all. Depending on the number of people that are actually charged under the provisions of the bill that are being eliminated, the bill could result in a decrease in costs on the state's correctional system and a decrease in costs for local units of government related to county jails and/or local misdemeanor probation supervision. (The average cost of prison incarceration in a state facility is roughly $34,800 per prisoner per year. State costs for parole and felony probation supervision average about $3,800 per supervised offender per year. 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.

House Bill 4249

The bill repeals several misdemeanors from state statutes. Misdemeanor fines go to public libraries. Misdemeanor convictions 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. It is not known how often these laws are enforced, if at all.

House Bill 4709

The bill would increase costs on local correctional systems depending on the number of convictions. 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. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

House Bill 4710

The bill would have an indeterminate fiscal impact on the state and local units of government and would depend on the number of convictions. Changing conviction penalty from a misdemeanor to a state civil infraction would eliminate costs for local corrections systems (county jails/probation supervision). Misdemeanor penalties result in a $50 assessment, directed to the Justice System Fund. Civil infraction penalties result in a $10 assessment, directed to the Justice System Fund. Therefore, revenues going to the Justice System Fund would be reduced. These revenues support various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services. Increases in applicable fines would benefit local libraries, which are the constitutionally designated recipients of such revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

House Bill 4711

Depending on the number of people that were actually charged under the provision being repealed regarding the sale of improperly marked rebuilt batteries, 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. 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. The other provisions proposed to be repealed by the bill are currently considered obsolete, not enforced, and therefore would not have a fiscal impact on state or local governments if repealed.

House Bill 4501

The bill would not have a fiscal impact on state or local government.

ARGUMENTS:

For:

From time to time, legislation is offered to repeal laws identified as unnecessary or obsolete. Without such "trimming", the law books become unwieldy with laws that overlap or no longer reflect current life. For instance, in Michigan, it is still against the law to mock someone in print for not accepting a challenge to a duel. Other statutes are no longer needed; for instance, the current prohibition on murder makes it unnecessary to have a separate statute specifying that killing a person in a duel constitutes first-degree murder. In another example, Michigan has comprehensive prohibitions and penalties for trespassing and larceny, thus making older statutes such as making it a misdemeanor to steal someone's vegetables from their garden duplicative and therefore unneeded. Other laws, such as making it a crime to include the national anthem in a medley or swearing in front of a woman or child are so obscure that a person could violate the prohibition not knowing they could be subject to a criminal penalty.

Thus, generally speaking, the bill package trims some no longer needed or no longer appropriate statutes from Michigan's criminal laws.

Against:

No arguments in opposition to the bills as reported were offered.

POSITIONS:

A representative of the Libertarian Party of Michigan testified in support of the bill package. (6-16-15)

The Criminal Defense Attorneys of Michigan indicated support for the bill package. (6-16-15)

Representatives of the following entities indicated support for specific bills in the package:

HB 4248
Department of State Police (4-21-15)
Prosecuting Attorneys Association of Michigan (6-16-15)
ACLU of Michigan (6-16-15)

HB 4249
Michigan Department of Agriculture and Rural Development (3-24-15)
Prosecuting Attorneys Association of Michigan (6-16-15)
ACLU of Michigan (6-16-15)

HB 4250
Prosecuting Attorneys Association of Michigan (6-16-15)
ACLU of Michigan (6-16-15)

HB 4709/HB 4501
Prosecuting Attorneys Association of Michigan (6-16-15)

HB 4710/HB 4711
ACLU of Michigan (6-16-15)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.