

# Legislative Analysis



## FIREARM DEFINITION/PNEUMATIC GUNS

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

**House Bill 4151 without amendment**  
**Sponsor: Rep. Peter Pettalia**

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

**House Bill 4152 without amendment**  
**Sponsor: Rep. Jason M. Sheppard**

**House Bill 4153 without amendment**  
**Sponsor: Rep. Ray A. Franz**

**House Bill 4155 (Substitute H-1)**  
**Sponsor: Rep. Triston Cole**

**House Bill 4154 without amendment**  
**Sponsor: Rep. Brett Roberts**

**House Bill 4156 without amendment**  
**Sponsor: Rep. Tom Barrett**

**Committee: Judiciary**  
**Analysis as reported from House Committee**  
**Complete to (2-18-15)**

**BRIEF SUMMARY:** Currently, the definition of "firearm" differs somewhat among several statutes. The bill package will align the definition of "firearm" in these statutes with the federal definition and will no longer treat pneumatic guns (also known as "air-soft guns") and pellet guns as firearms, with some exceptions. The bills are reintroductions from the previous legislative session and will take effect 90 days after enactment.

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 would repeal an act that prohibits unaccompanied minors from using or possessing certain BB guns outside of their property; and House Bill 4155 would make it a felony offense to use a pneumatic gun in the commission of a felony, make it a crime to transport certain types of pneumatic guns except as specifically allowed, and define the term "weapon."

**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 are 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 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.)

The problem the bill 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.

### ***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** would repeal Public Act 186 of 1959, which 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 would be repealed as well.

**House Bill 4152** would amend Chapter 1 of the Revised Statutes of 1846, which defines certain terms used in the compiled laws of Michigan (MCL 8.3t). The bill would replace 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** would revise 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** would amend 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.

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. The bill is tie-barred to Senate Bill 85, meaning that House Bill 4154 cannot take effect unless Senate Bill 85 is also enacted into law.

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 will delete the highlighted text and apply 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.)

(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** would amend 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 would also apply the prohibition 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. The bill is tie-barred to Senate Bill 85, meaning that House Bill 4155 cannot take effect unless Senate Bill 85 is enacted into law.

In addition, the bill would make 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 punishable by imprisonment for two years. A second conviction would be punishable 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.)

Under the bill, except as otherwise permitted by law, it would be 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 is designed, manufactured, and intended to inflict death or serious bodily injury.

Transporting a pneumatic gun designed, manufactured, and intended to inflict death or serious bodily injury 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, the bill defines the term "weapon" to include, but not be limited to, a pneumatic gun designed, manufactured, and intended to inflict death or serious bodily injury.

The bill is tie-barred to Senate Bill 85, which defines "pneumatic gun" as any implement designed as a gun that will expel a BB or pellet by spring, gas, or air. The term will include a paintball gun. SB 85 also grants local governments, cities, and charter townships limited regulation of the use of pneumatic guns in their jurisdictions.

**House Bill 4156** would amend 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.

### ***BACKGROUND INFORMATION:***

The bills are similar to a bipartisan package introduced in the 2014-2014 legislative session. Senate Bills 964-966 and 979 were enrolled but subsequently vetoed by the governor because the rest of the bills in the package (House Bills 5450, 5749, and 5750) did not make it through the Senate before the close of Session in December. In his explanation for the veto, Governor Snyder explained that signing part of the package into law would cause conflicts between the newly amended gun statutes and the statutes that did not get amended.

### ***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 \$3,700 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.

***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 would bring 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 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.

However, the package does put important public safety measures in place. Under House Bill 4155, it would be 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. House Bill 4155, as amended in committee to include pneumatic guns in the definition of "weapon," also prohibits airsoft guns from being carried on school property or in vehicles used to transport children to and from school.

***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 for 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. Further, because 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 includes pneumatic guns. Some feel this prohibition should be continued.

In addition, concerns have been raised by law enforcement regarding the transport of pellet guns and airsoft guns. The restrictions on transporting pneumatic guns in vehicles, boats, planes, and other types of vehicles apply only to ones *designed, manufactured, and intended to inflict death or serious bodily injury*. The first concern is that the wording implies that not all pneumatic guns would have to be unloaded, in a case, and inaccessible

when transported in cars and boats and other vehicles, even though an accidental discharge could result in an injury to another person. If the transportation restrictions apply only to those models *intended* to do harm, how would a law enforcement officer, or even an owner of a pneumatic gun, know the manufacturer's intent, rather than the model's capability, regarding the design or use of the gun? Even a BB gun can *kill* a squirrel and cause *serious bodily injury* by putting out an eye. So, to which models would the law apply? Therefore the bill could cause confusion for both law enforcement officers and gun owners and increase the likelihood for arrests by officers and gun owners inadvertently committing misdemeanors by forgetting which of their guns must be unloaded, broken down, and put in the trunk. Some have suggested that because pneumatic guns in general are capable of causing injury, and because they look similar to real guns, that they follow the same rules for safe transport as firearms.

***POSITIONS:***

A representative of the NRA-ILA testified in support of the bills. (2-10-15)

Michigan Open Carry indicated support for the bills. (2-10-15)

The Michigan Coalition of Responsible Gun Owners (MCRGO) indicated support for the bills. (2-17-15)

Calhoun County Gun Owners indicated support for the bills. (2-17-15)

The Department of State Police indicated a neutral position on House Bill 4155 and said that it had concerns with the bill. (2-10-15)

The Michigan Sheriff's Association did not indicate a position, but expressed that it has concerns regarding the transportation of weapons. (2-17-15)

Legislative Analyst: Susan Stutzky  
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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.