

CIVIL FINE FOR SALE OR DELIVERY OF NITROUS OXIDE

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

House Bill 5463 as introduced
Sponsor: Rep. Stephanie Chang

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

House Bill 5464 as introduced
Sponsor: Rep. Joseph N. Bellino, Jr.

Committee: Regulatory Reform
Complete to 2-21-18

SUMMARY:

House Bills 5463 and 5464 would amend Public Act 119 of 1967, which regulates the use of chemical agents with toxic chemicals or organic solvents, or both. Taken together, the bills would establish a civil fine for knowingly selling or distributing a device containing nitrous oxide to a person under the age of 18 years old, provide exceptions to the prohibition, and authorize the attorney general and county prosecutors to bring an action to recover a civil fine imposed under the proposed prohibition.

The bills are tie-barred to each other, meaning that neither could take effect unless the other one were also enacted. Each bill would take effect 90 days after enactment.

House Bill 5463 would prohibit the sale or distribution of a device that solely contains nitrous oxide to a person under the age of 18 for any purpose *unless* that person is accepting delivery of a device containing, or used to dispense, nitrous oxide in his or her capacity as an employee. The bill would exempt from this civil penalty a health care professional or a pharmacist, pharmacist intern, or pharmacy dispensing the device in the course of his or her duties as a pharmacist or pharmacist intern or as a pharmacy.

A person who knowingly sells or distributes a device solely containing nitrous oxide to a person under the age of 18 in violation of the above prohibition, or who fails to make *diligent inquiry* as to whether the person is a minor, would be liable for a civil fine and could be ordered by a court to pay up to \$500.

Diligent inquiry would mean a diligent good-faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal ID card, a military ID card, or any other bona fide picture ID that establishes the identity and age of the person.

MCL 752.272a

House Bill 5464 would add a new section to the act to allow the attorney general or a prosecuting attorney for the county in which the violation occurred to bring an action to recover a civil fine imposed for a violation of House Bill 5463. (Note: Though the bill

allows the attorney general or a county prosecutor to “recover” a civil fine that was imposed, the bill is not clear as to where the recovered civil fine revenue would be deposited.)

The bill would also amend the title of Public Act 119 of 1967 by eliminating from the title’s description that the act is *to provide penalties*. In its place, the bill would insert *to prescribe penalties and provide remedies*.

MCL 752.273

FISCAL IMPACT:

House Bill 5463 would have an indeterminate fiscal impact on local court funding units, which would depend on how provisions of the bill affected court caseloads and related administrative costs.

If civil fines are assessed by the courts, an increase in civil fine revenue would occur. However, the bill itself does not specify where the revenue would be dedicated. Typically, the fund to receive the civil fine revenue would be specified in the legislation. In this case, it could, by default, be an increase to the state’s general fund. Or, in the absence of statutory direction, it might be subject to the discretion of the court imposing the fine.

House Bill 5464 would not be expected to have a fiscal impact on the Department of the Attorney General. There may be limited, yet undetermined, costs to county prosecutors’ offices associated with any additional workload authorized by the bill.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Robin Risko
Michael Cnossen

■ 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.