



Senate Fiscal Agency
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BILL ANALYSIS



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House Bills 5463 and 5464 (as passed by the House)
Sponsor: Representative Stephanie Chang (H.B. 5463)
Representative Joseph Bellino (H.B. 5464)
House Committee: Regulatory Reform
Senate Committee: Judiciary

Date Completed: 4-9-18

CONTENT

House Bill 5463 would amend Public Act 119 of 1967, which governs the sale, distribution, and use of certain chemical agents, to do following:

- **Prohibit a person from selling or distributing a device that solely contained nitrous oxide to a person under 18 years of age unless he or she was accepting delivery of the device as an employee.**
- **Prescribe a maximum civil fine of \$500 for a person who knowingly sold or distributed a device solely containing nitrous oxide to a minor, or who failed to make diligent inquiry as to whether the person was a minor.**

House Bill 5464 would amend the Act to allow the Attorney General or a prosecuting attorney for the county in which a violation occurred to bring an action to recover the civil fine prescribed by House Bill 5463.

The bills are tie-barred to each other. Each bill would take effect 90 days after its enactment.

House Bill 5463 is described in greater detail below.

The Act prohibits a person from selling or otherwise distributing to another person a device that contains any quantity of nitrous oxide or a device to dispense nitrous oxide for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system. This prohibition does not apply to nitrous oxide that has been denatured or otherwise rendered unfit for human consumption, or to any of the following:

- A person licensed under Chapter 7 (Food and Processing Standards) of the Food Law, who sells or otherwise distributes the device as a grocery product.
- A person engaged in the business of selling or distributing catering supplies only or food processing equipment only, or selling or distributing compressed gases for industrial or medical use who sells or otherwise distributes the device in the course of that business.
- A pharmacist, pharmacist intern, or pharmacy who dispenses the device in the course of the person's duties as a pharmacist or pharmacist intern or as a pharmacy.
- A health care professional.

A person who violates this prohibition is subject to criminal penalties.

Under the bill, except for a pharmacist, pharmacist intern, pharmacy, or health care professional, a person would be prohibited from selling or otherwise distributing a device that solely contained nitrous oxide to a person under 18 years of age for any purpose unless he or she was accepting delivery of a device containing nitrous oxide or a device to dispense nitrous oxide in his or her capacity as an employee.

A person who knowingly sold or distributed a device that solely contained nitrous oxide to a person who was under 18, or who failed to make diligent inquiry as to whether the person was a minor, would be liable for a civil fine and could be ordered to pay up to \$500. "Diligent inquiry" would mean a diligent good-faith effort to determine the age of a person, including at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification card that establishes the identity and age of the person.

MCL 752.272a (H.B. 5463)
Proposed MCL 752.272b (H.B. 5464)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the State and local units of government. House Bill 5463 would subject individuals to a \$500 civil fine for selling a device that contained nitrous oxide to a minor, or for failing to make a diligent inquiry as to the age of the buyer. This would have the potential to increase revenue for the State, but it is unknown, by the language of the bills, whether that revenue would go to a restricted fund set aside for the Judiciary or the State's General Fund. House Bill 5464 would empower the Attorney General or a county prosecutor to bring an action to recover such fines. It is unknown if the filings would result in increased costs for the State or local counties via caseloads or administrative costs.

Fiscal Analyst: Joe Carrasco
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.