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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 264 (Substitute S-1 as reported)

Sponsor: Senator Gilbert J. DiNello

Committee: Health Policy

Date Completed: 3-14-88

**RATIONALE**

In 1981 and 1982 several instances of deliberate tampering with consumer products made national and international news, the most famous being the Tylenol cyanide poisonings which resulted in seven deaths, and the addition of sulfuric acid to eye drops and nasal sprays which caused several serious injuries. In a subsequent study of product tampering by the Federal Food and Drug Administration (FDA), the FDA stated that neither it nor manufacturers could guarantee protection against malicious tampering. The FDA pointed out that in the great majority of cases tampering occurred not at the stages of manufacture or distribution, but at the point where products were offered for retail sale. While the study concluded that the best way to make tampering more difficult was to improve the packaging of products, the FDA said that completely tamper-proof packaging was not possible. Even though the events of 1981 and 1982 spurred many companies to change and improve the safety of their packaging, and some states have moved to increase penalties for persons convicted of tampering, no comprehensive national policy has been formed to combat tampering. Thus, in the event that tampering occurs, states are left to deal with the emergency as best they can. In Michigan, the Department of Public Health is authorized through the Public Health Code to take certain emergency steps to control epidemics, and if the Director finds that citizens are in imminent danger, the Director can order the cause removed or prohibit the presence of individuals near the danger. The Department of Agriculture is authorized through the Michigan Food Law to seize and embargo foods that are believed to be misbranded or adulterated and a danger to the public. Some people feel, however, that these provisions are not adequate to protect the public in an instance in which a consumer product has been altered so as to present a danger, and that the State should have provisions in law to meet such an emergency should it arise.

**CONTENT**

The bill would create a new Act that would authorize the Governor to declare a public health state of emergency, upon request of either the Department of Agriculture or the Department of Public Health, if there were a reasonable basis to believe that a consumer product (food, beverage, or medicine consumed by humans, including prescription drugs) was adulterated and presented a threat to the public. "Adulterated" would be defined as it is in the Michigan Food Law.

If the consumer product were under the authority of the Department of Agriculture, pursuant to the Michigan Food Law, or under the authority of the Department of Public Health, pursuant to the Public Health Code, the Governor

could not declare a public health state of emergency unless requested to do so by the Department that regulated the consumer product. If the Governor granted the request, the requesting Department would be required to enforce the bill's provisions.

When declaring a public health emergency, the Governor could order any limitations, controls, or prohibitions considered necessary concerning the manufacture, importation, sale, or transportation of a consumer product, including a ban on its sale during the emergency; the removal of the product from public display in all retail establishments; and the segregation and holding of the product or portions of it by any retailer possessing the product for disposition by either law enforcement, public health or agriculture officials. ("Retailer" would mean a place of business that offers consumer products for sale to the general public.) A public health emergency would be in effect for not more than 60 days after it was declared, and could be renewed by the Governor for an additional 30 days. An emergency could not extend beyond that date unless the Legislature passed a resolution to renew the emergency.

An order could be amended or rescinded at any time by the Governor. An amendment to an order of a public health state of emergency would not be considered a new order. The Governor would be required to notify the Legislature promptly of an order, amended order, or rescinded order. The State would not be liable for the removal of the consumer product from public display, or for the costs related to its removal. The State or its agent acting under a declared emergency would not be liable for any damages or losses incurred because of any actions taken pursuant to the Governor's order.

The bill would require that an order or amended order be "disseminated by the Governor promptly by means calculated to bring its contents to the attention of the general public", and filed promptly with the Secretary of State and the Departments of State Police, Public Health, and Agriculture. The Attorney General, at the direction of the Governor, or upon request of either the Department of Agriculture or Public Health, or a county prosecuting attorney could initiate a court action to prevent a violation of the bill's provisions or to compel a person to perform a duty imposed by the bill. Persons who knowingly violated an order or the provisions of the bill would be guilty of a misdemeanor punishable by a fine of up to \$500 for each day a violation continued.

("Adulterated", as defined in the Michigan Food Law, includes several technical descriptions of when a food would be considered adulterated. Generally, it means that a food contains or bears a poisonous or deleterious

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substance or color additive which has been defined as unsafe; it consists of a diseased, contaminated, or decomposed substance; it has been produced or prepared under unsanitary conditions; it is the product of a diseased animal; or its container is composed of a poisonous substance.)

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

## **ARGUMENTS**

### ***Supporting Argument***

People buy food and consumer products with a very high degree of confidence that those items are safe and will perform as expected, and thus the public consumes those products without suspicion. Consumer products which have been tampered with or altered to cause death or injury present a serious health hazard from which the public must be protected. The bill would allow the State to take immediate, decisive action in the event that a usually safe, dependable consumer product was dangerously altered and offered for sale to an unsuspected public. Because the bill would provide the Governor with a great deal of flexibility to act on a perceived threat, by allowing the Governor to order any limitation or control necessary to prevent public contact with an adulterated product, it would be a valuable tool should an emergency arise.

### ***Opposing Argument***

The bill is not needed since mechanisms already are in place within the Departments of Agriculture and Public Health to react to incidents of tampering or adulteration of consumer products. Under the Michigan Food Law, the Department of Agriculture can detain or embargo food that is, or is suspected of being, adulterated or misbranded and can prohibit the sale of the food. The Director of the Department of Public Health, under the Public Health Code, can issue an order to avoid, correct, or remove an imminent danger, which is defined as a condition or practice that could cause death, disease, or serious physical harm. In addition, the State Public Health Department and local health departments are authorized under the Code to take emergency procedures to control the spread of an epidemic in an effort to protect the public health. Within the Department, the Center for Environmental Health Sciences also works with the Federal Consumer Product Safety Commission to investigate various consumer products. For example, the Center investigated the possibility of cancer-causing contaminants being contained in cloisonne jewelry, groundwater pollution and the use of that water in the preparation of certain products, as well as the use of contaminated water in the production of baby food. The Center also cooperated with the Product Safety Commission in investigating the hazards of All-Terrain Vehicles (ATVs) and the possibility of their causing accidental injuries to riders. Furthermore, the Agriculture Department has taken actions to remove adulterated food products from store shelves in Michigan. For example, 20,000 loaves of bread were removed because they were suspected of being contaminated with potassium cyanide. Several thousand cases of Austrian wine were recalled after it was discovered that the wine was contaminated with antifreeze that had been added

as a sweetener, and a shipment of California watermelons was seized because the watermelons were contaminated with a rodenticide. Michigan residents fortunately have not experienced major injuries or deaths due to tampered or contaminated products in comparison to occurrences in other states, such as the 16 deaths in Illinois last year caused by contaminated milk and 83 deaths in California from contaminated cheese. Given the positive track record of the Departments of Agriculture and Public Health in responding to potential health hazards, it is not clear that the bill would enhance procedures already at the disposal of these Departments.

***Response:*** While State law grants both Departments powers to act expeditiously when incidents of contaminated or tampered products occur, the bill would marshal the Governor's authority in order to respond immediately to protect Michigan consumers.

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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.