

ILLEGAL NITROUS OXIDE DEVICES

House Bill 4996 (Substitute H-1) House Bill 4497 with committee amendments First Analysis (5-16-00)

Sponsor: Rep. Jason Allen
Committee: Criminal Law and Corrections

THE APPARENT PROBLEM:

Nitrous oxide (“laughing gas”) has a number of legitimate commercial, industrial, and medical uses. It is used, for example, as a propellant for certain food products, including whipping cream, and also is used in dentistry for pain and anxiety control. However, it also can be used recreationally to induce temporary intoxication or euphoria, and reportedly is used by some people to enhance sexual pleasure.

Nitrous oxide is sold both at retail and wholesale in the form of compressed gas cylinders. Those cylinders sold wholesale are very large, reportedly coming in six-foot long cylinders. In contrast, the only size apparently sold at retail is in the form of small cartridges of nitrous oxide, about 2.5 inches long, that are meant to be inserted into small, hand-held containers used by bakers and others (such as in ice cream parlors) to add whipped cream toppings to their products. These small cartridges are available, however, not only in grocery stores and pharmacies, but reportedly also in novelty shops, along with apparatus that enables people to inhale the gas recreationally. Although current Michigan law regulating the use of chemical agents that release toxic vapors prohibits people from inhaling such chemical agents, the law does not restrict the sale or distribution of nitrous oxide devices that can be used recreationally.

According to prosecuting attorneys and sheriffs, people – but especially teenagers – inhale nitrous oxide from these small cartridges to get high. Since this kind of recreational use of nitrous oxide not only can induce a “high” but also can be physically dangerous, legislation has been introduced to restrict the sale of nitrous oxide devices that can be used recreationally.

THE CONTENT OF THE BILLS:

The bills would criminalize the sale and distribution of certain nitrous oxide devices, exempt certain categories of people from the prohibition, and specify the penalties for the misdemeanor violations of the act.

House Bill 4996 would amend Public Act 119 of 1967 (MCL 752.271 et al), which regulates the use of chemical agents with toxic chemicals or organic solvents or both, to

- amend the title,
- add a section to prohibit the sale or distribution of certain devices that contain nitrous oxide and add criminal penalties for violating the new prohibition,
- specify the criminal penalties for the misdemeanor violations of the act’s current prohibition against consuming the prohibited chemical, and
- repeal a current provision that criminalizes aiding and abetting violations of the act.

Title. The title of the act would be amended to state that the act would regulate the sale, distribution, and use of certain chemical agents and devices containing certain chemical agents, and to provide penalties.

Penalty for current misdemeanor consumption. Currently it is a misdemeanor to inhale or ingest chemical agents for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system, except for the inhalation of anesthesia for medical or dental purposes. The bill would specify that this misdemeanor would be punishable by imprisonment for up to 93 days, a fine of \$100, or both.

Prohibition against selling nitrous oxide devices. The bill would prohibit the sale or distribution of any device (a) with a gross weight of less than eight ounces that contained any quantity of nitrous oxide or (b) 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.

Exemptions. The bill's prohibition on sales or distribution of nitrous oxide devices would not apply to anyone who was:

- licensed under the Food Processing Act of 1977 and selling or distributing the device as a grocery product;
- engaged in the business of selling or distributing compressed gases for industrial or medical use and selling or distributing the device in the course of that business;
- a pharmacist, pharmacist intern, or pharmacy as defined in the Public Health Code and dispensing the device in the course of his or her duties; or
- a health care professional.

Penalties for sales. A first conviction for a violation of the prohibition against sales and distribution of nitrous oxide devices would be a misdemeanor punishable by no more than 93 days imprisonment, a fine of no more than \$100, or both. A second conviction would be a misdemeanor punishable by not more than one year of imprisonment and/or a fine of not more than \$500. A third or further conviction would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000. A prior conviction could include a previous violation of not only the bill's provisions, but of a substantially corresponding law of another state, local unit of government of this state or another, or of the United States.

Repealer. The bill would repeal a current provision that makes it a misdemeanor to aid, abet, or encourage someone to violate the act.

House Bill 4997 would amend the Code of Criminal Procedure's statutory sentencing guidelines (MCL 777.17) to include the sale or distribution of an illegal nitrous oxide device. The crime would be a class F crime against public safety with a four year statutory maximum for two or more prior convictions.

Effective date. If enacted, the bills would take effect on January 1, 2001.

BACKGROUND INFORMATION:

Public Act 119 of 1967 currently contains four sections. The first section defines "chemical agent" ("any substance containing a toxic chemical or organic solvent or both, having the property of releasing toxic

vapors," including, but not limited to, "glue, acetone, toluene, carbon tetrachloride, hydrocarbons and hydrocarbon derivatives"). The second section prohibits the intentional drinking, eating, or otherwise "introducing" into one's respiratory or circulatory system any chemical agent "for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction or dulling of the senses or nervous system," but does not prohibit the inhalation of any anesthesia for medical or dental purposes. The third section makes it a misdemeanor, with unspecified penalties, to violate the act's prohibition against ingestion. And the fourth section makes it a misdemeanor to assist, aid, abet, or encourage anyone to violate the act's provisions.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Nitrous oxide, like many chemicals and other items, can be properly used for legitimate purposes. But it also, like so many other things, can be abused. While nitrous oxide has legitimate medical (mostly as dental anesthesia), commercial, and industrial uses, it also reportedly is being used recreationally by people to get "high" or to enhance sexual pleasure. According to written testimony by the state prosecuting attorneys' association, Michigan's prosecutors have seen that abuse of nitrous oxide can lead to physical and mental problems and, in some cases, even death. The testimony mentions one Michigan case in which a couple died from overdosing on a container of nitrous oxide that they apparently used for the purpose of sexual enhancement, while in another case, a retailer had cases of cans of whipped cream returned by customers because stock handlers had inhaled all of the nitrous oxide propellant in the cans before the cans were sold. Written testimony by the Grand Traverse County prosecuting attorney reports that it is mostly junior and senior high school students who inhale nitrous oxide for the purpose of getting high. Written testimony submitted by the Grand Traverse County sheriff's office further reports that the sheriff has experienced a problem with an adult bookstore in Grand Traverse County selling nitrous oxide in small quantities (apparently in small containers known as "whippets") to teenagers, along with the apparatus which would allow them to attain a high. Because it currently is not illegal for novelty shops to sell these "personal dose" quantities of nitrous oxide, the sheriff

was unable to seize these nitrous oxide products, nor to charge the store owners with a crime for selling them.

The recreational use of nitrous oxide can be dangerous because it apparently produces its “recreational” effects by displacing oxygen in the body, which can cause disorientation, temporary loss of motor control, brain damage, and even death. Given these potential dangers from the improper use of nitrous oxide, and the fact that current law is aimed only at the user of the gas and not his or her access to it, the prudent course of action would seem to be to criminalize the sale of the small amounts of this gas (less than 8 ounces) that apparently are typically used by the “recreational user,” as well as criminalizing the devices that allow the gas to be inhaled for nonmedical purposes. The bills would limit the sale of “personal dose” sizes of nitrous oxide (and the accompanying inhalation apparatus), thereby making it harder for young people to obtain the gas for recreational use. At the same time, the bills would continue to allow legitimate commercial, industrial, and medical uses.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bills. (5-11-00)

The Michigan Sheriff’s Association indicated support for the bills. (5-11-00)

One of the two American manufacturers of bulk nitrous oxide indicated support of the bills. (1-17-00)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.