



**House
Legislative
Analysis
Section**

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**NITROUS OXIDE: PROHIBIT SALES
TO MINORS AND REQUIRE
RECORD-KEEPING**

**House Bills 4772 and 4773
Sponsor: Rep. Glenn S. Anderson
Committee: Criminal Justice**

Complete to 8-28-01

A SUMMARY OF HOUSE BILLS 4772 AND 4773 AS INTRODUCED 5-15-01

Public Act 299 of 2000 prohibited the sale or distribution of devices containing nitrous oxide and the sale or distribution of devices to dispense nitrous oxide for recreational purposes, specified penalties for violations of the new provisions, exempted nitrous oxide that has been denatured or rendered unfit for human consumption, and exempted members of certain occupations from the prohibition (such as pharmacists, health care professionals, professional caterers, and persons licensed under the Food Processing Act). House Bill 4772 would prohibit the sale or distribution of nitrous oxide to minors and require stringent record-keeping by persons who sell or distribute nitrous oxide within the state. House Bill 4773 would amend the sentencing guidelines to correct the reference to the illegal sale or distribution of nitrous oxide.

House Bill 4773 would amend Public Act 119 of 1967 (MCL 452.272a), which regulates the use of chemical agents with toxic chemicals or organic solvents or both, to prohibit the sale or distribution of nitrous oxide to a minor. It would also clarify that the existing prohibition on selling or distributing a device containing any quantity of nitrous oxide would pertain to sales or distributions of devices intended to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system. Persons selling or distributing nitrous oxide under this provision would have to adhere to stringent record-keeping requirements.

Record-keeping. Each transaction involving the sale or distribution of nitrous oxide would have to be recorded on a separate card. The card would have to contain the signature of both the seller and purchaser, as well as the date and the purchaser's complete address. Cards would have to be kept by the seller for one year from the date of the transaction, maintained at the seller's place of business, and be available during normal business hours for inspection and copying by officers or employees of the state Board of Pharmacy or other law enforcement agencies of the state or federal government authorized to investigate drug offenses. A card used to record each transaction would have to inform the purchaser of the following:

- that nitrous oxide cartridges are to be used only for purposes of preparing food;
- that inhalation of nitrous oxide can have dangerous health effects; and,
- that it is a violation of state law to sell or distribute nitrous oxide to minors.

In addition, each cartridge of nitrous oxide sold or distributed in the state would have to bear a printed message, as specified in the bill, that warned users of the health dangers if inhaled

House Bill 4772 and 4773 (8-28-01)

and that alerted consumers to the ban on sales to minors and the ban on nonfood uses. Further, at the time of sale or distribution, the seller or distributor of nitrous oxide would have to mark the package containing the cartridges with a label or device that identified his or her name and business address. (It is not clear whether persons licensed under the Food Processing Act, caterers, pharmacists, and health care professionals, who are exempted from the act's ban on selling or distributing nitrous oxide containers, would also be exempted from the record-keeping requirements.)

Penalties. The bill would add penalties for selling or distributing nitrous oxide to a minor. For a first offense, the person would be guilty of a felony punishable by imprisonment for not more than one year or a fine of not more than \$1,000, or both. For a second or subsequent offense, the person would be guilty of a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both.

Currently, selling or distributing a device containing nitrous oxide is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both. A second conviction is a misdemeanor punishable by up to one year imprisonment or a fine of not more than \$500, or both. Subsequent violations are felonies punishable by up to four years imprisonment or a fine of not more than \$2,000, or both. Under the bill, these penalties would also apply to a seller or distributor who did not comply with the bill's record-keeping requirements.

House Bill 4773 would amend the Code of Criminal Procedure (MCL 777.17) to correct a reference to the provisions prohibiting the sale and distribution of nitrous oxide.

(Note: The correction listed in the bill would reference MCL 752.272a(6)(b), which specifies that a second or subsequent violation of the ban on selling or distributing nitrous oxide to a minor is a felony with a statutory maximum of four years imprisonment. However, the bill does not reference MCL 752.272a(6)(a), which would specify that a first offense of selling nitrous oxide to a minor would be a felony with a statutory maximum of one year imprisonment, nor would it reference MCL 752.272a(7)(c), which currently specifies that a third or subsequent violation of the ban on selling nitrous oxide for recreational purposes is a felony with a statutory maximum of four years imprisonment.)

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■ 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.