

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5174 (Substitute H-1 as passed by the House)
 House Bill 5175 (Substitute H-3 as passed by the House)
 House Bill 5176 (Substitute H-2 as passed by the House)
 House Bill 5177 (Substitute H-1 as passed by the House)
 House Bill 5178 (Substitute H-1 as passed by the House)

Sponsor: Representative David Robertson (H.B. 5174)
 Representative Mike Nofs (H.B. 5175)
 Representative David Farhat (H.B. 5176)
 Representative Stephen Ehardt (H.B. 5177)
 Representative Tom Casperson (H.B. 5178)

House Committee: Criminal Justice
 Senate Committee: Judiciary

Date Completed: 6-22-04

CONTENT

House Bills 5174 (H-1) and 5175 (H-3) would amend the Michigan Penal Code and the Public Health Code, respectively, to revise the criminal penalties, and prescribe administrative sanctions, for adulterating drugs or medicine. Under the bills, certain offenses that presently are misdemeanors would be felonies, and would include the elements of knowing or reckless conduct and intent to defraud. The penalties would depend on whether an offense resulted in personal injury, serious impairment of bodily function, or death, as shown in Table 1.

Table 1

Violation/Result	Imprisonment	Maximum Fine
Violation w/out injury or death	Up to 4 years	\$5,000
Personal injury	Up to 10 years	\$10,000
Serious impairment of bodily function	Up to 25 years	\$25,000
Death	Life or any term of years	\$40,000

House Bills 5176 (H-2) and 5177 (H-1) would amend the Code of Criminal Procedure to include the felonies proposed by House Bills 5174 (H-1) and 5175 (H-3) in the sentencing guidelines.

House Bill 5178 (H-1) would amend the Corrections Code to exclude from the parole board's jurisdiction offenders sentenced to imprisonment for life under House Bill 5174 (H-1) for violations that resulted in death.

The bills would take effect 90 days after their enactment. House Bill 5176 (H-2) is tie-barred to House Bill 5175; House Bill 5177 (H-1) is tie-barred to House Bills 5174 and 5178; and House Bill 5178 (H-1) is tie-barred to House Bills 5174 and 5177.

House Bill 5174 (H-1)

Under the Penal Code, a person who fraudulently adulterates, for the purpose of sale, any drug or medicine in order to render it injurious to health is guilty of a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

The bill would delete that provision and instead prohibit a person from knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine in a manner that rendered it injurious to health, with the intent to defraud another. A violation would be punishable as shown in Table 1.

The Code also prohibits a person from mixing, coloring, staining, or powdering a drug or medicine with any ingredient or material, except for the purpose of compounding in the necessary preparation of medicine, in order to affect injuriously its quality or potency, or allowing any other person to do so, with intent to sell the adulterated drug or medicine. The bill would prohibit this activity if it were done knowingly or recklessly, with the intent to defraud another.

In addition, the Code prohibits selling or offering for sale any drug or medicine adulterated in the manner described above. A violation of either offense is a misdemeanor with no specified penalty. (Under the Code, when no other penalty is prescribed, a misdemeanor is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.)

Under the bill, those violations would be felonies, punishable as shown in Table 1.

House Bill 5175 (H-3)

Under the Public Health Code, a person is guilty of a misdemeanor if he or she does either of the following:

- Adulterates, misbrands, or substitutes a drug or device knowing or intending that it be used.
- Sells, offers for sale, possesses for sale, causes to be sold, or manufactures for sale an adulterated or misbranded drug.

The bill would prohibit a person from performing these activities knowingly or recklessly, with the intent to defraud. The violations would be felonies, punishable as shown in Table 1.

The Code also makes it a misdemeanor for a person to sell, offer for sale, possess for sale, or manufacture for sale a drug or device bearing or accompanied by a label that is misleading as to the contents, uses, or purposes of the drug or device. The bill would retain this as a misdemeanor.

In addition, under the Code, the Department of Community Health (DCH) may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The DCH may hold hearings and must report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee must impose various sanctions if it finds that certain grounds exist. The bill would add to the grounds that require sanctions a felony described above. A violator would be subject to license revocation, a fine, and restitution.

House Bill 5176 (H-2)

The bill would include the felonies proposed by House Bill 5175 (H-3) in the sentencing guidelines, as shown in Table 2.

Table 2

Violation/Result	Felony Level	Maximum Sentence
Adulteration, etc., w/out injury or death	Class F - Public Safety	4 years
Adulteration, etc., causing personal injury	Class D - Public Safety	10 years
Adulteration, etc., causing serious impairment	Class A - Public Safety	25 years
Adulteration, etc., causing death	Class A - Public Safety	Life

House Bill 5177 (H-1)

The bill would include the felonies proposed by House Bill 5174 (H-1) in the sentencing guidelines, as shown in Table 3.

Table 3

Violation/Result	Felony Level	Maximum Sentence
Adulteration, mixing, etc., w/out injury or death	Class F - Person	4 years
Violation causing personal injury	Class D - Person	10 years
Violation causing serious impairment	Class A - Person	25 years
Violation causing death	Class A - Person	Life

House Bill 5178 (H-1)

Under the Corrections Code, a prisoner sentenced to imprisonment for life generally is subject to the parole board's jurisdiction after having served 10 years, if sentenced for a crime committed before October 1, 1992, or after having served 15 years, if sentenced for a crime committed on or after that date.

A prisoner sentenced to imprisonment for life for first-degree murder or for a violation of Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code is not subject to parole board jurisdiction, however, and must serve a life sentence without possibility of parole. Under the bill, a prisoner sentenced to life for a violation of House Bill 5174 (H-1) that resulted in death, also would not be subject to parole board jurisdiction.

MCL 750.16 & 750.18 (H.B. 5174)
333.16221 et al. (H.B. 5175)
777.13n (H.B. 5176)
777.16a (H.B. 5177)
791.234 (H.B. 5178)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State or local government. There are no data to indicate how many offenders would be convicted of the proposed felonies. Table 4 shows the proposed crime class and sentencing guidelines minimum sentence ranges for each of the four levels of penalty the proposed offenses. Local units would incur the cost of intermediate sanctions and incarceration in a local facility, both of which vary by county. The State would incur the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional penal fine revenue raised from the additional fines.

Table 4

Offense	Crime Class	Minimum Sentence Range
Violations w/out injury or death	F	0-3 months to 17-30 months
Violations resulting in personal injury	D	0-6 months to 43-76 months
Violations resulting in serious impairment of bodily function	A	21-35 months to Life
Violations resulting in death	A	21-35 months to Life

Fiscal Analyst: Bethany Wicksall

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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.