



Senate Fiscal Agency
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Senate Bill 996 (as passed by the Senate)
Sponsor: Senator Stephanie Chang
Committee: Committee of the Whole

Date Completed: 10-7-22

RATIONALE

Nitrous oxide (also commonly known as "laughing gas") is a colorless nonflammable gas that is commonly used for sedation and pain relief. It also is a food additive, specifically an aerosol spray propellant, used in reusable whipped cream dispensers and cooking sprays. "Whippets" (also spelled "whippits" or "whip-its") are a slang term used to describe the steel aerosol containers filled with nitrous oxide used for reusable whipped cream cannisters. Although nitrous oxide is most often used for pain relief, it also can be used recreationally to induce temporary intoxication or euphoria. One of the popular methods people use to inhale the nitrous oxide contained within a whippet is to use a reusable whipped cream dispenser. Others often release the gas into a balloon, which warms the gas and makes it easier to inhale. "Crackers" are flashlight-sized items that are used to pierce a whippet and allow the user to quickly transfer the gas into a balloon for inhalation. Accordingly, it has been suggested that the sale of objects designed specifically for inhaling nitrous oxide for recreational purposes be prohibited.

CONTENT

The bill would amend Article 7 (Controlled Substances) of the Public Health Code to prohibit a person from selling or offering for sale an object specifically designed for inhaling nitrous oxide for recreational purposes knowing that the object would be used to inhale nitrous oxide for recreational purposes.

Section 7453 of the Code prohibits a person from selling or offering for sale drug paraphernalia knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Before a person is arrested for a violation of Section 7453, the Attorney General or a prosecuting attorney must notify the person in writing, within two business days before the person is to be arrested, that he or she is in possession of specific, defined material that has been determined by the Attorney General or prosecuting attorney to be drug paraphernalia. The notice also must request that the person refrain from selling or offering for sale the material and must state that if the person complies with the notice, no arrest will be made for a violation. If a person complies with the notice, the compliance is a complete defense in a prosecution under Section 7453, as long as the compliance continues.

Under the bill, a person also could not sell or offer for sale an object specifically designed for inhaling nitrous oxide for recreational purposes knowing that the object would be used to inhale nitrous oxide for recreational purposes. The notification provisions described above also would apply to a person who was in possession of specific, defined material determined to be an object specifically designed for inhaling nitrous oxide for recreational purposes.

(A person who violates Section 7453 is guilty of a misdemeanor, punishable by up to 90 days' imprisonment or a maximum fine of \$5,000, or both.)

The bill would take effect 90 days after its enactment.

MCL 333.7453

BACKGROUND

Public Act (PA) 119 of 1967, which governs the sale, distribution, and use of certain chemical agents, 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, except under certain circumstances. The prohibition on the sale or distribution of any device containing any quantity of nitrous oxide 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 the prohibition described above is guilty of a crime as follows:

- A misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of \$100, or both.
- If the person has one prior conviction, a misdemeanor punishable by up to one year imprisonment or a maximum fine of \$500, or both.
- If the person has two or more prior convictions, a felony punishable by up to four years' imprisonment or a maximum fine of not more than \$2,000, or both.

Public Act 136 of 2018 amended PA 119 to prohibit a person, except for a pharmacist, pharmacist intern, pharmacy, or health care professional, from selling or distributing a device that solely contains nitrous oxide to a person under 18 years of age or older unless he or she is accepting delivery of the device as an employee. A person who knowingly sells or distributes a device that solely contains nitrous oxide to a person who is under the age of 18, or who fails to make diligent inquiry as to whether the person is a minor, is liable for a civil fine and may be ordered to pay not more than \$500.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that nitrous oxide is the most commonly used inhalant in the United States. According to the 2016 National Survey on Drug Use and Health conducted by SAMHSA, about 11.8 million participants in the survey reported past misuse of nitrous oxide (up from over 700,000 who reported misusing it in 2011). Misusing or abusing nitrous oxide can lead to personality changes, emotional disorders, impulsive behaviors, hallucinations, delusions, and other psychotic symptoms. Long-term misuse may result in organ damage, seizures, irregular heart rhythms, loss of lung or heart function,

comas, or death. Reportedly, the risk of death or serious harm or damage increases if nitrous oxide is used in combination with other drugs or alcohol.

Formed in 2019, the Southwest Detroit Whippet Wipeout Campaign Coalition is a coalition of community organizations, businesses, and community leaders whose mission is to reduce whippet abuse and littering in Detroit neighborhoods through collaborative, community-based intervention methods. In 2020, the Coalition lead a cleanup effort aimed at collecting and disposing of empty whippet containers from local parks and neighborhoods. Volunteers collected over 25,000 whippet cartridges in less than a month of cleanup. In 2022, the group conducted a second cleanup and collected roughly 8,000 whippets in one morning.

However, despite recent legislative and community action, nitrous oxide misuse and abuse, particularly among adolescents, continues to increase. A SAMHSA study in 2019 found that 4.6% of adolescents surveyed between the ages of 12 and 17 had misused nitrous oxide.

The bill would help limit the access to objects such as crackers, which are used solely to access the nitrous oxide contained within whippets and have no legitimate purpose. The goal of the legislation is to address the issue of access without criminalizing the user.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bill could have a negative fiscal impact on State and local government. New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Fiscal Analyst: Joe Carrasco, Jr.

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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.