



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



BILL ANALYSIS

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

Senate Bills 57 and 58 (as enacted)
Sponsor: Senator Stephanie Chang (S.B. 57)
Senator Joseph Bellino, Jr. (S.B. 58)
Committee: Health Policy

PUBLIC ACTS 18 & 19 of 2024

Date Completed: 3-18-24

RATIONALE

Nitrous oxide (also 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") is a slang term used to describe the steel aerosol containers filled with nitrous oxide used for charging 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. This recreational use can cause long-term brain damage, seizures, psychosis, bone marrow problems, motor skill problems, and even death. According to testimony before the Senate Committee on Health Policy, adults and minors have been using whippets at higher rates since the start of the COVID-19 pandemic. Reportedly, a six-week collection campaign in Detroit in 2020 collected over 30,000 whippets. Given the legitimate uses of steel aerosol containers, banning these containers is undesirable. To disincentivize whippet use without banning the use of nitrous oxide, it was suggested that the sale of paraphernalia for the inhalation of nitrous oxide be prohibited.

CONTENT

Senate Bill 57 amends 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 will be used to inhale nitrous oxide for recreational purposes.

Senate Bill 58 amends Article 7 of the Public Health Code to prescribe a misdemeanor for selling or offering for sale to a person less than 18 years of age an object specifically designed for inhaling nitrous oxide for recreational purposes.

Each bill will take effect on June 10, 2024.

Senate Bill 57

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, if the compliance continues.

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

Senate Bill 58

Section 7455 of the Code prescribes a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$5,000, or both, for a violation of Section 7453. Additionally, Section 7455 specifies that a person 18 years of age or older who violates Section 7453 by selling or offering to sell drug paraphernalia to a person less than 18 years of age is guilty of a misdemeanor punishable by imprisonment for up to a year or a fine of up to \$7,500, or both.

Under the bill, these provisions apply to the selling or offering of an object specifically designed for inhaling nitrous oxide for recreational purposes.

MCL 333.7453 (S.B. 57)

MCL 333.7455 (S.B. 58)

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 57 is a reintroduction of Senate Bill 996 from the 2021-2022 Legislative Session. Senate Bill 996 passed the Senate and was referred to the House Committee on Judiciary but received no further action.

Senate Bill 57 and Senate Bill 58 are companion bills to House Bill 4347 and House Bill 4348, respectively.

BACKGROUND

Reportedly, a popular method people use to gain access to the nitrous oxide contained within a whippet is the release of 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.

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 use of whippets can have negative personal and societal effects. According to the Substance Abuse and Mental Health Services Administration, over 12.0 million people nationwide have tried nitrous oxide at least once. According to testimony before the House Committee on Health Policy, Michigan emergency department visits related to the misuse of nitrous oxide increased by 132% between 2022 and 2023. The euphoria experienced from inhaling nitrous oxide only lasts 30 to 45 seconds, so many canisters are often used at once as people chase a longer euphoric experience. Additionally, according to testimony before the Senate Committee on Health Policy, there is no test for confirming if someone had just inhaled nitrous oxide. This combination of short highs that require lots of nitrous oxide inhalation to

maintain and poor testing for identifying nitrous oxide inhalation increases the chance that individual consumption will result in more severe symptoms. Nitrous oxide functionally inactivates Vitamin B12, leading to demyelination in the brain, spinal cord, and peripheral nervous system.¹ Demyelination refers to the damaging of the protective covering (or myelin sheath) that surrounds a person's nerve fibers in the brain.² This can lead to muscle weakness, muscle stiffness and spasms, loss of coordination, walking problems, and more.³ Additionally, in rarer cases, a person can experience ischemic optic neuropathy, or the sudden loss of vision due to an interruption in blood flow to the optic nerve.⁴

According to testimony before the Senate Committee on Health Policy, nitrous oxide inhalation is also a significant cause of motor vehicle accidents because it is easy to abuse while driving. When combined with symptoms like euphoria, loss of coordination, or the sudden loss of vision, driving becomes a dangerous activity. To combat the further popularization of nitrous oxide inhalation, and to aid communities heavily affected by the consequences of nitrous oxide use like Detroit, drug paraphernalia for the consumption of nitrous oxide should be prohibited.

Supporting Argument

According to testimony before the House Committee on Health Policy, whippets gained popularity during the COVID-19 pandemic for three reasons: 1) users did not have to deal with illegal drug dealers and could instead purchase the whippets from legal merchants; 2) whippets are a product that are often approved by the Food and Drug Administration and are therefore mistakenly associated with being safe to consume; and 3) many whippet users have used nitrous oxide at the dentist's office; however, a dental application of nitrous oxide is mixed with oxygen, unlike the nitrous oxide found in whippets, and is created by a trained professional who carefully monitors the patient during treatment.⁵ These reasons cause individual consumers of whippets to trivialize the harmful effects that the drug may have on them. Banning the sale of drug paraphernalia would raise awareness about the harmful effects caused by whippets.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

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

Fiscal Analyst: Joe Carrasco, Jr.

¹ Thompson, Alexander et al., National Library of Medicine, "*Whippets, nitrous oxide and the dangers of legal highs*", June 2015.

² Cleveland Clinic, "*Demyelinating Disease*", October 2023.

³ *Id.*

⁴ Thompson, Alexander et al, National Library of Medicine, "*Whippets, nitrous oxide and the dangers of legal highs*", June 2015.

⁵ American Dental Association, "*Nitrous Oxide*", August 2023.

SAS\S2324\s57ea

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.