

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 4996 (Substitute H-1 as passed by the House)  
House Bill 4997 (as passed by the House)  
Sponsor: Representative Jason Allen  
House Committee: Criminal Law and Corrections  
Senate Committee: Judiciary

Date Completed: 9-20-00

## **CONTENT**

**House Bill 4996 (H-1)** would amend Public Act 119 of 1967, which regulates the use of chemical agents, to prohibit the distribution of certain devices containing nitrous oxide, except under certain circumstances, and to repeal Section 4 of the Act, which provides that assisting, aiding, abetting, or encouraging another to violate the Act is a misdemeanor.

**House Bill 4997** would amend the Code of Criminal Procedure to include in the sentencing guidelines the felony of selling or distributing illegal nitrous oxide devices, as proposed by House Bill 4996 (H-1).

The bills would take effect on January 1, 2001, and House Bill 4997 is tie-barred to House Bill 4996.

### **House Bill 4996 (H-1)**

Public Act 119 of 1967 prohibits a person from intentionally smelling or inhaling the fumes of any chemical agent or intentionally eating, drinking, or otherwise introducing any chemical agent into his or her respiratory or circulatory system, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system.

The bill also would prohibit a person from selling or otherwise distributing to another person any device that had a gross weight of less than eight ounces and that contained 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.

The bill's prohibition would not apply to any of the following:

- A person licensed under the Food Processing Act or Chapter VII of the Food Law, who sold or otherwise distributed the device as a grocery product.
- A person engaged in the business of selling or distributing compressed gases for industrial or medical use who sold or otherwise distributed the device in the course of that business.
- A pharmacist, pharmacist intern, or pharmacy that dispensed 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 violation of the bill would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$100, or both. If the offender had one prior conviction, a violation would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$500. If the offender had two or more prior convictions, a violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. "Prior conviction" would mean a previous violation of the bill or a law of another state, a law of a local unit of government of this State or another state, or a law of the United States that substantially corresponded to the bill.

Currently, a violation of the Act is a misdemeanor with no specified penalty (which means that it is punishable by imprisonment for up to 90 days and/or a maximum fine of \$100). Under the bill, a violation of the Act, other than for the distribution offense proposed by the bill, would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100.

### **House Bill 4997**

Under the bill, the sale or distribution of illegal nitrous oxide devices, with two or more prior convictions, would be categorized in the sentencing guidelines as a Class F felony against public safety, with a statutory maximum penalty of four years' imprisonment, as proposed by House Bill 4996 (H-1).

MCL 752.273 et al. (H.B. 4996)  
777.17 (H.B. 4997)

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of the misdemeanor offense of selling or distributing an illegal nitrous oxide device or the felony of selling or distributing an illegal nitrous oxide device on a third or subsequent offense. Local units of government receive the fine revenue or incur the cost of incarceration for offenders convicted of misdemeanors.

The felony offense would be a Class F felony for which the sentencing guideline recommendation ranges from 0-3 months to 17-30 months. Assuming that five offenders a year would be convicted of the felony and receive and serve the maximum penalty, given an average annual cost of incarceration of \$22,000, the cost of incarceration to the State would be \$275,000. If the offenders were scored at the lower end of sentencing guideline range, local units of government would incur the costs of incarceration, which vary among the counties.

Fiscal Analyst: K. Firestone

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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.