

HOUSE BILL No. 5463

January 30, 2018, Introduced by Reps. Chang, Bellino, Sneller, Moss, Wittenberg, Chirkun, Dianda, Crawford, Theis, Webber, Griffin, Hammoud, Lucido, Pagan, Yaroch and Jones and referred to the Committee on Regulatory Reform.

A bill to amend 1967 PA 119, entitled

"An act to regulate the sale, distribution, and use of certain chemical agents and devices containing certain chemical agents; and to provide penalties,"

by amending section 2a (MCL 752.272a), as added by 2000 PA 299.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) **EXCEPT FOR A PERSON DESCRIBED IN SUBSECTION**
2 **(3) (C) OR (D) ACTING IN THE COURSE OF HIS OR HER DUTIES, A PERSON**
3 **SHALL NOT SELL OR OTHERWISE DISTRIBUTE A DEVICE THAT SOLELY**
4 **CONTAINS NITROUS OXIDE TO A PERSON UNDER THE AGE OF 18 FOR ANY**
5 **PURPOSE UNLESS THE PERSON UNDER THE AGE OF 18 IS ACCEPTING DELIVERY**
6 **OF A DEVICE CONTAINING NITROUS OXIDE OR A DEVICE USED TO DISPENSE**
7 **NITROUS OXIDE IN HIS OR HER CAPACITY AS AN EMPLOYEE.**
8 (2) **A PERSON WHO KNOWINGLY SELLS OR DISTRIBUTES A DEVICE THAT**
9 **SOLELY CONTAINS NITROUS OXIDE TO A PERSON WHO IS UNDER THE AGE OF**
10 **18 IN VIOLATION OF SUBSECTION (1), OR WHO FAILS TO MAKE DILIGENT**

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1 INQUIRY AS TO WHETHER THE PERSON IS A MINOR, IS LIABLE FOR A CIVIL
2 FINE AND MAY BE ORDERED TO PAY NOT MORE THAN \$500.00.

3 (3) ~~(1)~~—A person shall not sell or otherwise distribute to
4 another person any device that contains any quantity of nitrous
5 oxide or sell or otherwise distribute a device to dispense nitrous
6 oxide for the purpose of causing a condition of intoxication,
7 euphoria, excitement, exhilaration, stupefaction, or dulling of the
8 senses or nervous system. This subsection does not apply to nitrous
9 oxide that has been denatured or otherwise rendered unfit for human
10 consumption or to any of the following:

11 (a) A person licensed under ~~the food processing act of 1977,~~
12 ~~1978 PA 328, MCL 289.801 to 289.810, or~~ chapter VII of the food
13 law, ~~of 2000,~~ 2000 PA 92, MCL 289.7101 to 289.7137, who sells or
14 otherwise distributes the device as a grocery product.

15 (b) A person engaged in the business of selling or
16 distributing catering supplies only or food processing equipment
17 only, or selling or distributing compressed gases for industrial or
18 medical use who sells or otherwise distributes the device in the
19 course of that business.

20 (c) A pharmacist, pharmacist intern, or pharmacy as defined in
21 section 17707 of the public health code, 1978 PA 368, MCL
22 333.17707, who dispenses the device in the course of his or her
23 duties as a pharmacist or pharmacist intern or as a pharmacy.

24 (d) A health care professional.

25 (4) ~~(2)~~—A person who violates subsection ~~(1)~~—(3) is guilty of
26 a crime as follows:

27 (a) Except as provided in subdivisions (b) and (c), the person

1 is guilty of a misdemeanor punishable by imprisonment for not more
2 than 93 days or a fine of not more than \$100.00, or both.

3 (b) If the person has 1 prior conviction, the person is guilty
4 of a misdemeanor punishable by imprisonment for not more than 1
5 year or a fine of not more than \$500.00, or both.

6 (c) If the person has 2 or more prior convictions, the person
7 is guilty of a felony punishable by imprisonment for not more than
8 4 years or a fine of not more than \$2,000.00, or both.

9 (5) ~~(3)~~As used in this section: ~~"prior~~

10 (A) "DILIGENT INQUIRY" MEANS A DILIGENT GOOD-FAITH EFFORT TO
11 DETERMINE THE AGE OF A PERSON, WHICH INCLUDES AT LEAST AN
12 EXAMINATION OF AN OFFICIAL MICHIGAN OPERATOR'S OR CHAUFFEUR'S
13 LICENSE, AN OFFICIAL MICHIGAN PERSONAL IDENTIFICATION CARD, A
14 MILITARY IDENTIFICATION CARD, OR ANY OTHER BONA FIDE PICTURE
15 IDENTIFICATION THAT ESTABLISHES THE IDENTITY AND AGE OF THE PERSON.

16 (B) "PRIOR conviction" means a previous violation of this
17 section or a law of another state, a law of a local unit of
18 government of this state or another state, or a law of the United
19 States substantially corresponding to this section.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.

22 Enacting section 2. This amendatory act does not take effect
23 unless Senate Bill No. ____ or House Bill No. 5464 (request no.
24 04787'17) of the 99th Legislature is enacted into law.