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ADULTERATING DRUGS, MEDICINES, AND DEVICES

House Bill 5174

Sponsor: Rep. David Robertson

House Bill 5175

Sponsor: Mike Nofs

House Bill 5176

Sponsor: David Farhat

House Bill 5177

Sponsor: Stephen Ehardt

House Bill 5178

Sponsor: Tom Casperson

Committee: Criminal Justice

Complete to 2-9-04

House Bills 5174-5178 (2-9-04)

A SUMMARY OF HOUSE BILLS 5174-5178 AS INTRODUCED 10-15-03

Together the bills would amend various acts to increase the penalties for adulterating, misbranding, or substituting a drug or medicine with the intent to defraud.

House Bill 5174 would amend the Michigan Penal Code (MCL 750.16 and 750.18). Currently, under the penal code, a person who fraudulently adulterates, for the purpose of sale, a drug or medicine so as to render it injurious to the health of another individual is guilty of a misdemeanor punishable by imprisonment not exceeding one year and/or a fine not exceeding \$1,000.

The bill would prohibit a person, with intent to defraud, from knowingly adulterating, misbranding, or substituting a drug or medicine so as to render that drug or medicine injurious to an individual's health. A person who violates this provision would be guilty of a felony punishable by imprisonment not exceeding four years and/or a fine not exceeding \$5,000. However, the penalty would increase if the violation results in a personal injury, serious impairment of bodily function, or death. If the violation results in a personal injury, it would be punishable by imprisonment not exceeding 10 years and/or a fine not exceeding \$10,000. If the violation results in a serious impairment of bodily function, it would be punishable by imprisonment not exceeding 25 years and/or a fine not exceeding \$25,000. If the violation results in death it would be punishable by life imprisonment.

The act also currently prohibits a person from mixing, coloring, staining, or powdering a drug or medicine with another ingredient so as to render that drug or medicine injurious to another individual, and from ordering or permitting another individual from doing the same and from selling or offering for sale such an adulterated drug or medicine. A violation is a

misdemeanor. The bill would specify that a violation of the above provision would be a felony punishable in the same manner as described in the previous paragraph, except that a violation resulting in death would be punishable by imprisonment for life or any term of years and/or a fine of up to \$40,000.

House Bill 5175 would amend provisions in the Public Health Code (MCL 333.16221 et al.) relating to penalties for adulterating or selling an adulterated drug or medicine. Under the act, the Department of Community Health may investigate activities related to the practice of a health profession by a licensee. The department is required to report its findings to the appropriate disciplinary subcommittee for further disciplinary action if sufficient grounds exist to warrant further action. The act lists numerous reasons that warrant disciplinary action by the subcommittee.

The bill would add to that list knowingly and recklessly adulterating, misbranding, or substituting a drug or device knowing that it will be used, or selling, offering for sale, or possessing for sale, or manufacturing for sale an adulterated or misbranded drug. If the subcommittee finds existence of a violation, the penalty would be license revocation, a fine, and restitution. In addition to that penalty, the health code would make those acts felonies, punishable by imprisonment and a fine in the same manner described in House Bill 5174, except that a violation that results in death would be punishable by imprisonment for life or any term of years and/or a fine not exceeding \$40,000.

House Bill 5176 would make corresponding amendment to Chapter XVII of the Code of Criminal Procedure (MCL 77713n) to specify in the sentencing guidelines that a violation of the provisions in the Public Health Code relating to adulterating a drug or medicine with intent to defraud would be a crime against the public safety. A violation that does not result in a personal injury, serious impairment, or death would be a class F felony with a maximum term of imprisonment of 4 years. A violation that results in a personal injury would be a class D felony with a maximum term of imprisonment of 10 years. A violation that results in a serious impairment of a bodily function would be a class A felony with a maximum term of imprisonment of 25 years. Finally, a violation that results in death would be a class A felony with a maximum term of imprisonment of life. The bill is tie-barred to House Bill 5175.

House Bill 5177 would make corresponding amendment to Chapter XVII of the Code of Criminal Procedure (MCL 777.16a) to specify in the sentencing guidelines that a violation of the provisions in the Michigan Penal Code relating to adulterating a drug or medicine with intent to defraud would be a crime against a person. A violation that does not result in a personal injury, serious impairment, or death would be a class F felony with a maximum term of imprisonment of 4 years. A violation that results in a personal injury would be a class D felony with a maximum term of imprisonment of 10 years. A violation that results in a serious impairment of a bodily function would be a class A felony with a maximum term of imprisonment of 25 years.

In addition, the bill would specify that a violation of the provisions in the Michigan Penal Code relating to the prohibition against mixing, coloring, staining, or powdering a drug or medicine with another ingredient so as to cause injury with the intent to defraud would be a crime against a person. A violation that does not cause personal injury, serious impairment, or

death would be a class F felony with maximum term of imprisonment of four years. A violation that results in personal injury would be a class D felony with a maximum term of imprisonment of 10 years. Finally, a violation that results in serious impairment of a bodily function would be a class A felony with a maximum term of imprisonment of 25 years. The bill is tie-barred to House Bills 5174 and 5178.

House Bill 5178 would amend the Corrections Code of 1953 (MCL 791.234). That code currently provides that a prisoner under a life sentence who has served 10 calendar years of the sentence for a crime committed before October 1, 1992 or 15 calendar years for a crime committed on or after October 1, 1992, with certain exceptions, may be eligible for parole. The act excludes from parole eligibility a prisoner under a life sentence for first degree murder or a violation of Chapter XXXIII of the Michigan Penal Code (relating to explosives, bombs, and harmful devices). The bill would also exclude a prisoner under a life sentence under the Michigan Penal Code for adulterating a drug or medicine with the intent to defraud when it resulted in death, or mixing, coloring, staining, or powdering a drug or medicine with another ingredient with intent to defraud when it resulted in death. The bill is tie-barred to House Bill 5174 and House Bills 5177.

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.