

Legislative Analysis



PROHIBIT SALE OR DISTRIBUTION OF DRUG MASKING PRODUCTS

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Senate Bill 134 (H-1) as reported from House committee
Sponsor: Sen. Curtis S. VanderWall
1st House Committee: Health Policy
2nd House Committee: Judiciary
Senate Committee: Health Policy and Human Services
Complete to 6-30-22

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 147 of 2022)

BRIEF SUMMARY: Senate Bill 134 would amend the Michigan Penal Code to make it a criminal offense to sell, deliver, distribute, or possess with the intent to sell, deliver, or distribute a substance to mask the presence of drugs in a urine or oral fluid (saliva) test.

FISCAL IMPACT: The bill would have an indeterminate impact on local correctional costs depending on the number of persons charged and convicted under the bill's prohibition on selling, distributing, or delivering drug masking products or possessing with the intent to do so. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Many occupations and professions require drug testing as part of the job application process or as a condition of continued employment. Since many drugs can impact a person's judgment or physical dexterity, impairment from unlawful and controlled substances can result in injuries or death to the employee or to others from the impaired operation of vehicles, tools, or machinery. Although the number of companies requiring drug testing has increased over the past decade, the number of positive tests has decreased. According to committee testimony, this is believed to be in part because employees who are regularly subjected to random drug tests are less likely to abuse drugs and in part because of the increasing use of fake urine and adulterants to disguise or break down drugs in a person's urine or oral fluids. Reportedly, the incidence of invalid specimens has doubled over the last 10 years.

Such adulterants and synthetic urine are easily obtainable over the internet and at local stores. Some feel that making it illegal to sell, deliver, or distribute products whose sole purpose is to defraud drug tests would help increase public safety. It has been suggested that Michigan join with the 18 states that have enacted some form of prohibition of products used to mask drugs in tests.

THE CONTENT OF THE BILL:

Senate Bill 134 would add a new section to the Michigan Penal Code to make it a criminal offense to distribute, deliver, sell, or possess with intent to distribute, deliver, or sell a **drug masking product**. A violation would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

Drug masking product would include **synthetic urine**, human urine, a substance designed to be added to human urine, or a substance designed to be added to or used

on human hair or oral fluid, for the purpose of defrauding an alcohol or drug screening test.

Synthetic urine would mean a substance designed to simulate the composition, chemical properties, physical appearance, or physical properties of human urine.

Proposed MCL 750.410c

HOUSE COMMITTEE ACTION:

The House Health Policy committee reported an H-1 substitute that corrected a typographical error.

FISCAL INFORMATION:

Senate Bill 134 would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations would be misdemeanors, and new misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Contrary to some media reports, the bill would not prohibit an individual from buying, possessing, or using a drug masking product to defraud a mandatory drug test (although engaging in such conduct would violate probation and parole conditions if drug tests were mandated and could result in sanctions by employers or would-be employers). Instead, the bill would address those who sell, distribute, or deliver such products or who possess a product with the intent to do so.

A search of the internet, or a stroll through the aisles of certain shops, can quickly turn up multiple products marketed for the sole purpose of adulterating, cleansing, or masking controlled substances or alcohol from detection in urine or oral fluids to defraud drug tests. Even synthetic urine, a combination of chemicals and salts found in human urine, is sold in packaging easy to sneak into a stall and swap for the real thing. Some products are intended to be consumed in order to dilute or “cleanse” a urine sample. Special shampoos are offered to make toxins in hair harder or impossible to detect. Reportedly, the use of masking products for urine, oral fluids, and hair is continuing to increase, putting the safety of the public and fellow employees at risk by thwarting detection of those who operate machinery, tools, and vehicles while under the influence of controlled substances or alcohol. Some employers now conduct supervised urine tests to catch cheaters, which not only raises privacy concerns, but is a more costly type of testing to conduct. The bill is not expected to stop all cheating, but it is thought

that going after those who profit by selling and distributing products to defraud drug tests should make it harder for individuals to access such products and thereby mitigate the problem.

Against:

The bill as currently written appears to limit what would constitute a drug masking product to substances used to replace, or change the chemical makeup of, the urine of the test subject and so may not apply to the sale, delivery, or distribution of cleansing and detoxifying products that are sold as masking agents, as these products are not added to or swapped for a person's urine. Also used to defraud a drug test, these products use a combination of diet, capsules, and liquid cleansers containing various vitamins, herbs, and other ingredients to quickly flush certain chemical compounds, including THC, from a person's body either permanently or for a small window of several hours for the purpose of passing a drug test.

POSITIONS:

A representative of Quest Diagnostics testified in support of the bill. (5-19-22)

The Michigan Manufacturers Association indicated support for the bill. (5-19-22)

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