

Date of Hearing: July 11, 2017

**ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS**

Evan Low, Chair

SB 631(Nielsen) – As Amended June 8, 2017

**SENATE VOTE:** 39-0

**SUBJECT:** Nitrous oxide: retail sales

**SUMMARY:** Prohibits a retailer of tobacco or tobacco related products from selling, offering, or exposing for sale nitrous oxide. Would authorize a civil penalty against a retailer in violation of this prohibition and require the suspension of the retailer's license to sell tobacco products if the retailer holds that license.

**EXISTING LAW:**

- 1) Defines a "tobacco store", under the Stop Tobacco Access to Kids Enforcement Act, as a retail business that meets the following requirements: (Business and Professions Code (BPC) Section 22962(4)(A))
  - a) Primarily sells tobacco products.
  - b) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.
  - c) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Family Code Section 6903.
  - d) Does not sell alcoholic beverages or food for consumption on the premises.
- 2) Establishes the Cigarette and Tobacco Products Licensing Act, which outlines the licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products, and all manufacturers and importers of cigarettes. (BPC Section 22970 et seq.)
- 3) Requires the State Board of Equalization (BOE), under the Cigarette and Tobacco Products Licensing Act, to administer a statewide program to license cigarette and tobacco products manufacturers, importers, distributors, wholesalers, and retailers. (BPC Section 22970.2)
- 4) Defines "retail location" as both any building from which cigarettes or tobacco products are sold at retail or a vending machine. (BPC Section 22971(q))
- 5) Prohibits selling tobacco products without a valid license and makes violations punishable as a misdemeanor. (BPC Section 22980.2; 22981)
- 6) Provides that possession of nitrous oxide with the intent to breathe, inhale, or ingest for the purpose of intoxication is a misdemeanor, except pursuant to legitimate dental or medical use. (Penal Code (PC) Section 381b)

- 7) Provides that selling, furnishing, administering, distributing, giving away, or offering to sell, furnish, administer, distribute, or give away a device, canister, tank, or receptacle containing nitrous oxide to a person under 18 years of age is a misdemeanor. (PC Section 381c)
- 8) Provides that it is a misdemeanor to dispense or distribute nitrous oxide to a person if the dispenser or distributor of the nitrous oxide knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to himself, herself, or another person. (PC Section 381d)
- 9) Requires that a person who dispenses or distributes nitrous oxide record each transaction in a written or electronic document. (PC Section 381e)
- 10) Provides that the person dispensing or distributing the nitrous oxide require the purchaser to sign the document recording the transaction, provide a complete residential address, and present valid government-issued photo identification. Requires that the person dispensing or distributing the nitrous oxide sign and date the document and retain the document at the person's business address for one year from the date of the transaction for inspection. (Penal Code Section 381e)
- 11) Requires that the document signed by the purchaser include all of the following:  
(PC Section 381e)
  - a) That inhalation of nitrous oxide outside of a clinical setting may have dangerous health effects;
  - b) That it is a violation of state law to possess nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication;
  - c) That it is a violation of state law to knowingly distribute or dispense nitrous oxide to a person who intends to breathe, inhale, or ingest it for the purpose of intoxication.

**THIS BILL:**

- 1) Establishes that it is unlawful for a retailer of tobacco or tobacco-related products to sell, offer, or expose for sale, any device, canister, tank, or receptacle containing nitrous oxide.
- 2) Does not apply to the sale of nitrous oxide as a propellant of food products.
- 3) Establishes that any person or business in violation of this section is subject to a civil penalty of \$2500. Sets rules for where the civil penalty must be deposited with the State.
- 4) Requires the suspension of a license to sell tobacco products for 90 days if the person or business holds such a license.
- 5) Defines "retailer of tobacco or tobacco-related products"

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author, “In October of 2016, a constituent contacted my office when his 20-year-old son was hospitalized after using nitrous oxide, also known as 'whip-its,' which he legally purchased through a smoke shop. Intended for use in aerating homemade whipped cream, young people buy and inhale nitrous oxide gas to get high because they mistakenly believe it is a safe substance. In reality, numerous people have experienced long-lasting health problems due to nitrous oxide abuse, and the substance has been the cause of multiple recent drugged driving fatalities. There is no legitimate reason for smoke shops to sell nitrous oxide. SB 631 protects Californians by prohibiting these smoke shops and head shops from selling this dangerous substance.”

**Background.** Nitrous oxide is a colorless gas commonly used as a propellant for whipped cream, as an anesthetic during some medical procedures (also known as “laughing gas”), and in car racing. According to a 2007 survey by the American Dental Association, inhaled nitrous oxide was used in 70 percent of dental procedures involving sedation.

The inhalation of household products for the purpose of intoxication, especially by children and young adults is not limited to nitrous oxide, however, unlike other household products inhaled to get high, nitrous oxide is sometimes sold in tobacco or cigarette shops alongside other regulated products.

The National Institute for Drug Abuse (NIDA) states that “although the high that inhalants produce usually lasts just a few minutes, people often try to make it last by continuing to inhale again and again over several hours.” Short-term effects of inhalant use include slurred or distorted speech, lack of coordination, euphoria, dizziness, light-headedness, hallucinations, delusions, vomiting, headaches, and drowsiness. Long-term effects of inhalant use include liver and kidney damage, hearing loss, bone marrow damage, loss of coordination and limb spasms from nerve damage, delayed behavioral development, and brain damage from a lack of oxygen. Inhalant abuse can also cause seizures, coma, and death.

Under current law, it is unlawful to intentionally be under the influence of nitrous oxide, except as part of a legitimate medical procedure. Additionally, selling or furnishing nitrous oxide to a minor is a misdemeanor.

**Prior Related Legislation.** AB 1735 (Hall, Chapter 458, Statutes of 2014) made it a misdemeanor for any person to dispense or distribute nitrous oxide to a person, if it is known or should have been known that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately causes great bodily injury or death to himself/herself, or any other person.

AB 1015 (Torlakson, Chapter 266, Statutes of 2009) makes it a misdemeanor for a person to sell or furnish to a person under the age of 18 years a canister or device containing nitrous oxide or a chemical compound mixed with nitrous oxide.

**ARGUMENTS IN SUPPORT:**

None on file

**ARGUMENTS IN OPPOSITION:**

None on file

**AMENDMENTS:**

The committee recommends the following technical amendment to ensure conformity between the exemption for food product propellants and the prohibition on sale of nitrous oxide.

(b) This section does not apply to the sale, *offering for sale, or exposure for sale* of nitrous oxide contained in food products for use as a propellant.

**REGISTERED SUPPORT:**

Los Angeles County Sheriff's Department

**REGISTERED OPPOSITION:**

None on file

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