

Date of Hearing: August 26, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 491 (Nielsen) – As Amended July 7, 2021

Policy Committee:	Revenue and Taxation	Vote:	10 - 0
	Public Safety		8 - 0

Urgency: No                      State Mandated Local Program: No                      Reimbursable: No

**SUMMARY:**

This bill sets licensure penalties for a business that violates laws related to the distribution of nitrous oxide. Specifically, this bill:

- 1) Requires a court to order the suspension, for up to one year, of the business license of a person who has previously been convicted of a violation related to the distribution of nitrous oxide and knowingly violates such provisions of law again, unless the owner provides evidence of a good faith effort to prevent violations.
- 2) Allows the prosecuting entity to notify the California Department of Tax and Fee Administration (CDTFA) of any above-described convictions.
- 3) Allows CDTFA to deny, suspend or revoke the license of a retailer with specified nitrous oxide-related convictions. CDTFA must provide at least 10 days written notice to a licensee and allow the licensee an opportunity to appeal the decision, but only to correct a mistake or clerical error.

**FISCAL EFFECT:**

- 1) Costs of an unknown amount to CDTFA, dependent on the number of violation notifications received, to develop and issue a notice of suspension for nitrous oxide sales violations, inspect suspended licensee locations and update computer programs (Cigarette and Tobacco Products Compliance Fund). CDTFA currently licenses approximately 34,000 cigarette and tobacco products retailers and estimates if 20% of those retailers sell nitrous oxide and 1% of those sellers violate nitrous oxide laws, costs to CDTFA would be under \$10,000. However, if the number of violations increases, CDTFA's costs would grow accordingly and may no longer be absorbable.

Additionally, CDTFA notes current cigarette and tobacco license fees that fund related administration and enforcement do not account for enforcement of nitrous oxide violations. Since this bill requires additional CDTFA action against a licensee, license fees may need to increase to cover additional costs.

- 2) Cost pressures to the courts in additional workload (General Fund (GF) and Trial Court Trust Fund). This bill requires a court to suspend a repeat offender's business license. The estimated workload cost of one hour of court time is \$956. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for

increased funding for courts to perform existing duties. This is particularly true given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The 2021 budget act includes \$72 million in ongoing GF revenue and an additional one-time \$60 million GF allocation for trial courts to continue addressing the backlog and provide timely access to justice.

#### COMMENTS:

- 1) **Purpose.** The author shares the impetus for this bill stems from a constituent who “contacted my office upon learning that his 20-year-old son had been using nitrous oxide, also known as ‘whippits,’ which he legally purchased through a smoke shop. The substance abuse degraded his health to the point that he was unable to walk.” According to the author, this experience “is far from an isolated incident” and this bill will protect others “by prohibiting retailers of tobacco or tobacco-related products from selling nitrous oxide, a product intended for use in making whipped cream but often illegally inhaled as a dangerous recreational drug.” This bill is sponsored by the Los Angeles County Sheriff’s Department.
- 2) **Regulating the Sale of Nitrous Oxide.** AB 1015 (Torlakson), Chapter 266, Statutes of 2009, made the sale or furnishing of nitrous oxide to a minor a misdemeanor (Penal Code Section 381c) and required a one-year suspension of the business license of a person who has been convicted of this crime for a second time, unless the business owner demonstrated good faith efforts to prevent the sale. AB 1735 (Hall), Chapter 458, Statutes of 2014, made it a misdemeanor for any person to dispense or distribute nitrous oxide to any person, if it is known or should have been known that the nitrous oxide is used for recreational drug purposes and the person then causes great bodily injury or death to themselves or another person (Penal Code Section 381d). AB 1735 also required persons distributing or selling nitrous oxide to record each transaction (Penal Code 381e). However, AB 1735 did not similarly require business license suspensions for second violations of enacted nitrous oxide laws. This bill requires court-ordered suspension of a business license for second violations of Penal Code Sections 381d and 381e, mirroring the suspension for second violations of Penal Code Section 381c.

The Cigarette and Tobacco Products Licensing Act of 2003 requires CDTFA to license retailers who sell cigarette and tobacco products. This bill allows CDTFA to deny, revoke or suspend a license if the applicant or licensee has been convicted of any of the above-described crimes and allows for an appeal only to correct a mistake or clerical error. However, CDTFA notes this bill limits the appeal rights of all licensees, not just those with nitrous oxide violations. The author intends to fix this drafting error and further specify a prosecuting attorney may notify CDTFA of all nitrous oxide violations, not just those under Penal Code Section 381d, for ease of administration.

- 3) **Related Legislation.** SB 193 (Nielsen), of the 2019-20 Legislative Session, would have made it a misdemeanor for a tobacco retailer to sell or offer to sell nitrous oxide and contained business license suspension provisions similar to this bill. SB 193 was held on this committee’s Suspense File.

SB 631 (Nielsen), of the 2017-18 Legislative Session, would have prohibited a tobacco retailer from selling nitrous oxide and authorized civil penalties for violations of the prohibition. SB 631 was referred to, but not heard by, the Assembly Judiciary Committee.

**Analysis Prepared by:** Irene Ho / APPR. / (916) 319-2081