
THIRD READING

Bill No: AB 1109
Author: Connolly (D), et al.
Amended: 6/6/23 in Senate
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 12-0, 6/19/23
AYES: Roth, Nguyen, Alvarado-Gil, Archuleta, Ashby, Dodd, Eggman, Glazer,
Niello, Smallwood-Cuevas, Wahab, Wilk
NO VOTE RECORDED: Becker

ASSEMBLY FLOOR: 75-0, 5/18/23 - See last page for vote

SUBJECT: Product sales: sodium nitrite

SOURCE: Author

DIGEST: This bill makes it unlawful for a person, retailer, or online marketplace to sell sodium nitrite to a person under 18 years of age and provides defenses for a violation of this provision beginning July 1, 2024. This bill also makes it unlawful for a person, retailer, or online marketplace to sell sodium nitrite in concentrations greater than 10 percent to a person 18 years of age or older.

ANALYSIS:

Existing law:

- 1) Establishes the federal Food, Drug, and Cosmetic Act (FFDCA), which among various functions regulates food, drugs, dietary supplements, and cosmetics. (21 United States Code § 310 *et.seq.*)
- 2) Allows sodium nitrite, as a the food additive, to be safely used in or on specified foods according to the following prescribed conditions and pursuant to federal regulation. Requires, to assure safe use of the additive, in addition to the other information required by FFDCA, the label of the additive or of a mixture containing the additive to bear specific information.

- 3) Requires, if in a retail package intended for household use, the label and labeling of the additive, or of a mixture containing the additive, to bear adequate directions for use to provide a final food product which complies with certain limitations. Requires, if in a retail package intended for household use, the label of the additive, or of a mixture containing the additive, to bear the statement "Keep out of the reach of children." (21 Code of Federal Regulations § 172.175)
- 4) Establishes the Sherman Food, Drug and Cosmetics Law, administered by the California Department of Public Health (DPH), which regulates the packaging, labeling, and advertising of drugs and devices, including dietary supplements. (Health & Safety Code (HSC) § 109875-111929.4)
- 5) Establishes the California Age-Appropriate Design Code Act, commencing July 1, 2024, which requires a business that provides an online service, product, or feature likely to be accessed by children to comply with specified requirements, including a requirement to configure all default privacy settings offered by the online service, product, or feature to the settings that offer a high level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children, and to provide privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that online service, product, or feature. (Civil Code § 1798.99.28 *et seq.*)
- 6) States that starting January 1, 2009, no person or entity will manufacture, sell, or distribute in commerce any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent, among other safety measures. (HSC § 108937 *et seq.*)
- 7) Provides protections against chemicals known as brominated flame retardants (BFRs) are widely used in California, which have been linked to disrupting thyroid hormone balance and contribute to a variety of developmental deficits, including low intelligence and learning disabilities, as well as potentially cancer. (HSC § 108920 *et seq.*)
- 8) Prohibits the manufacture, sale, delivery or offering for sale any cosmetic product that contains specific intentionally added ingredients, including specified phthalates, formaldehyde, mercury, parabens, and specified polyfluoroalkyl substances, beginning January 1, 2025. (HSC § 108980-108982)

- 9) Prohibits the sale, manufacture, or exchange of any toy that is contaminated with any toxic substance or that is coated with paints and lacquers with lead compounds, as specified. (HSC § 108555)
- 10) Specifies that no person may manufacture, process, or distribute in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1% of pentaBDE (pentabrominated diphenyl ether), or octaBDE, as specified, on or after June 1, 2006. (HSC § 108922)
- 11) Prohibits the manufacture, sale, or distribution of any toy or child care article that contain phthalates, in concentrations exceeding 0.1%, as specified. (HSC § 108935-108939)
- 12) Prohibits, on or after July 1, 2023, the manufacture, sale or distribution of any new juvenile product that contains regulated PFAS chemicals. Defines juvenile product as a product that is designed for use by infants and children under 12 years of age, including pillows, highchair, play yard, stroller, and mattress, as specified. (HSC § 108944-108947)

This bill:

- 1) Makes various findings and declarations about suicide and young people and that sodium nitrite can be easily purchased online and in retail stores by children and teenagers.
- 2) States that on or after July 1, 2024, it is unlawful for a person, retailer, or online marketplace to sell sodium nitrite to a person under 18 years of age.
- 3) States that it is unlawful for a person, retailer, or online marketplace to sell sodium nitrite in concentrations greater than 10 percent to a person 18 years of age or older.
- 4) States it is a defense to a violation of 2) if a person can demonstrate either of the following:
 - a) The person, retailer, or online marketplace is able to demonstrate both of the following:
 - i) The purchaser acknowledged before purchase they were at least 18 years of age through an effective system created by the person, retailer, or online marketplace that is capable of verifying the age of purchasers to ensure they are above the minimum legal age to purchase a product. This system shall not rely on the purchaser simply providing a date of birth

without additional verification, using tick boxes to ask purchasers to confirm they are over the minimum age, using a general disclaimer such as: “Anyone ordering this product from our website will be deemed to be at least 18 years of age,” using an “accept” statement for the purchaser to confirm that they have read the terms and conditions and are over the minimum age, using e-payment services that do not verify a user’s age, or only accepting payment by credit card without additional age verification.

- ii) The person, retailer, or online marketplace took all reasonable precautions and exercised all due diligence to ensure that the product would be sold and delivered to a person at least 18 years of age.
 - b) The purchaser acknowledged before purchase they were at least 18 years of age, and the person, retailer, or online marketplace complies with the requirements of the California Age-Appropriate Design Code Act (Title 1.81.47 (commencing with Section 1798.99.28) of Part 4 of Division 3 of the Civil Code).
- 5) States this bill does not apply to the sale of sodium nitrite to a business.

Background

Previous Legislative Efforts Around Business Regulation And Ensuring Health and Safety for Californians. In the past almost twenty years, the Legislature has heard bills that discuss the importance of ensuring prohibition and sales on certain products. In 2007, SB 456 (Simitian, 2007) would have prohibited a person from manufacturing, processing, or distributing in commerce a product containing diacetyl, except that this prohibition would have been delayed, as prescribed. Diacetyl is a compound that, according to the bill’s findings and declarations, is “associated with constrictive bronchiolitis obliterans, a severe and potentially fatal lung disease that causes inflammation and scarring in the small airways of the lungs which leads to severe impairment of lung function. Most cases do not respond to medical treatment and can only be cured by lung transplant.” The purpose of the bill was to find a “precautionary approach regarding the production, use, storage, or disposal of products containing diacetyl, which is an artificial flavoring mixed with other ingredients to produce a butter-like flavor in a variety of food products. It is used in hundreds of consumer food products, including, but not limited to, microwave popcorn, pancake syrup, cakes, candies, and frozen foods.” Ultimately, the bill was placed on the inactive file on the Assembly Floor. Unlike in the above case where a precautionary approach was warranted because

diacetyl was associated with a fatal lung disease, in this case, young people have actually died as a direct result of sodium nitrite intake.

In 2011, SB 514 (Simitian, Chapter 199, Statutes of 2011) made it a crime for any person, retailer, or corporation to willfully and knowingly provide dimenhydrinate or dextromethorphan (DXM) to a minor in an over-the-counter sale without a prescription, as specified. This law also presumes that any transaction in which the defendant failed to check the identification of a person who did not appear to be at least 25 years of age violates this new crime. It also allows an affirmative defense where the seller demanded and reasonably relied on apparently valid proof of the purchaser's age, as specified, and requires a seller of over-the-counter DXM to use, if feasible, a cash register equipped with an age verification feature, as specified, among other things. DXM is a cough suppressant found in over the counter flu and cough medications, including cough syrups. It can be addictive and toxic, and life-threatening when taken in too high of doses.

In 2013, SB 1144 (Strickland, Chapter 867, Statutes of 2013) required any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes substances to any person or entity in this state or any other state to submit a report to the Department of Justice of all of those transactions. The substances discussed here include methylamine and pseudoephedrine, among others. Moreover, any manufacturer, wholesaler, retailer, or other person or entity in this state needed to provide a current valid business license number or DEA registration number, among other things, as specified.

Therefore reporting requirements, providing licensing information, prohibition against sale of a known toxic and life-threatening substance over the counter to minors, and various presumptions and defenses, are commonly part of California's history around efforts to protect the public, and especially minors, in these cases.

Finally, existing law requires guardrails around chemicals that can be harmful to overall health. This includes the manufacture, sale, and distribution of toys or child care articles containing amounts of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), phthalates, or PFAS chemicals found in pillows, highchairs, play yards, strollers, and mattresses as specified; have protections against brominated flame retardants (BFRs); prohibit the manufacture, sale, and delivery or offering for sale of any cosmetic product that contains specific intentionally added ingredients, including specified phthalates, formaldehyde, mercury, parabens, and specified polyfluoroalkyl substances); and prohibit the manufacture, sale, or exchange of a toy coated with paints and lacquers with lead compounds, prohibits the manufacture, process, or distribute in commerce a

product, or a flame-retarded part of a product, containing more than one-tenth of 1% of pentaBDE (pentabrominated diphenyl ether), or octaBDE.

Sodium Nitrite and Increased Suicide Attempts. Sodium nitrite is a white, odorless, crystalline powder, granule or rod. Typically, the substance is used as a common preservative in cured meats to increase shelf life. It can also be used in animal control, car maintenance, and as part of severe cases for cyanide poisoning. If enough of it is ingested, the compound can interfere with a person's red blood cells' ability to transport oxygen, as well as cause headache, dizziness, fatigue, nausea, vomiting, diarrhea, abdominal pain, and even methemoglobinemia (blue coloring on the skin and lips). It is also important to note the difference between sodium nitrite and sodium nitrate, where sodium nitrate is a substance that has antimicrobial properties when used as a food preservative (such as in jerky, bacon, ham, hot dogs, and lunch meats), and is also naturally found in leafy green vegetables. [Research](#) suggests too much sodium nitrate can lead to colorectal cancer, and other diseases including leukemia, non-Hodgkin lymphoma, heart disease, and ovarian, thyroid and other types of cancer may be linked to excessive consumption of sodium nitrate.

Recently, U.S. poison centers have received a 253% increase in reports of self-poisoning with sodium nitrites and nitrates and a 166% increase in fatalities in 2021 as compared with 2018, according to [America's Poison Centers](#), which represents 55 poison centers across the country. They say that "since 2018, nearly 15 percent of nitrites and nitrates self-poisoning cases have resulted in death, with

88 percent of individuals requiring management in a health-care facility."

Treatments for sodium nitrite poisoning, such as methylene blue (a reducing agent that converts methemoglobin to hemoglobin and permits the normal functioning of red blood cells with oxygen), must be administered in a timely way to be effective.

This Bill. This bill makes it unlawful for a person, retailer, or online marketplace to sell sodium nitrite to a person under 18 years of age on or after July 1, 2024, and provides defenses for a violation of this provision. This bill also makes it unlawful for a person, retailer, or online marketplace to sell sodium nitrite in concentrations greater than 10 percent to a person 18 years of age or older.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/21/23)

None received

OPPOSITION: (Verified 6/21/23)

None received

ASSEMBLY FLOOR: 75-0, 5/18/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Wallis, Ward, Weber, Wicks, Wood, Zbur, Rendon

NO VOTE RECORDED: Cervantes, Vince Fong, Friedman, Waldron, Wilson

Prepared by: Dana Shaker / B., P. & E.D. /
6/21/23 14:29:24

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