

Date of Hearing: April 29, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1107 (Flora) – As Introduced February 20, 2025

SUMMARY: Mandates a court suspend a business license for up to one year of any business or person that knowingly fails to record any nitrous oxide sale, as specified. Specifically, **this bill**:

- 1) Authorizes the California Department of Tax and Fee Administration (CDTFA) to deny a license for a retailer to sell cigarettes or tobacco products if:
 - a) The retailer has been convicted of selling or furnishing a device, canister, tank, or receptacle either exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years.
 - b) The retailer engaged in the illegal sale of nitrous oxide to a person who suffers death or great bodily injury.
 - c) The retailer fails to properly document a sale of nitrous oxide, as specified.
- 2) Mandates a court suspend or revoke a business license to sell cigarettes or tobacco products if a licensee violates provisions of the Business & Professions Code related to administering nitrous oxide in a dental practice.
- 3) Requires a court to order any business license be suspended for up to one year if a person knowingly dispenses or distributes nitrous oxide for illegal use, as specified, and that person suffers death or great bodily injury as a result as a second violation unless the owner or employee of the business license can demonstrate good faith attempt to prevent the dispensing of nitrous oxide for an illegal purpose.
- 4) Requires a court to order any business license be suspended for up to one year if a person knowingly fails to report each transaction of sale of nitrous oxide, as specified.

EXISTING LAW:

- 1) Provides that any person that possesses nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, ingest for the purposes of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly with the intent to do so, is under the influence of nitrous oxide is a guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed \$1,000, or by both imprisonment and a fine. (Pen. Code, § 381b.)

- 2) States that every person who sells, furnishes, administers, distributes, or gives away, or offers to sell, furnish, distribute, or give away a device, canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound containing nitrous oxide to a person under 18 years of age is guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed \$1,000, or by both imprisonment and a fine. The court shall consider ordering community service as a condition of probation. (Pen. Code, § 381c, subd. (b).)
- 3) Provides that it is a defense to the crime of selling nitrous to a minor if the defendant honestly and reasonably believed that the minor involved in the offense was at least 18 years of age. The defendant bears the burden of establishing this defense by a preponderance of the evidence. (Pen. Code, § 381c, subd. (c)(1) & (2).)
- 4) Makes it a misdemeanor punishable by a term of imprisonment not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to dispense or distribute nitrous oxide to a person knowing or having reason to believe that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, euphoria, dizziness, or stupefaction and that person proximately cause great bodily injury or death to himself, herself, or any other person. (Pen. Code, § 381d.)
- 5) Requires a person that distributes or dispenses nitrous to record each transaction involving nitrous oxide in a physical written document. The person dispensing or distribution the nitrous oxide shall require the purchaser to sign the document and provide a residential address and present a valid government issued photo identification card. The person dispensing or distributing the nitrous oxide shall sign and date the document and retain the document at the business address for one year from the date of the transaction, and shall make transaction records available during normal business hours for inspection and copying by officers and employees of the California State Board of Pharmacy, or of other law enforcement agencies of this state or of the United States upon presentation of a duly authorized search warrant. (Pen. Code, § 381e, subd. (a).)
- 6) Requires that the document used to record each nitrous oxide transaction shall inform the purchaser of all of the following:
 - a) The inhalation of nitrous oxide may be hazardous to your health;
 - b) That it is a violation of state law to possess nitrous oxide or any substance containing 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 or any substance containing nitrous oxide, to a person who intends to breathe, ingest, or inhale it for the purpose of intoxication.
 - d) States that these requirements shall not apply to any person that administers nitrous oxide for the purpose of providing medical or dental care if administered by a medical or dental provider licensed by this state or at the direction or under the supervision of a practitioner licensed in this state; and,

- e) Provides that these requirements shall not apply to the sale of nitrous oxide contained in food products for use as a propellant. (Pen. Code, § 381e, subd. (b).)
- 7) Requires, commencing June 30, 2004, a retailer have in place and maintain a license to engage in the sale of cigarettes or tobacco products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses. (Bus. & Prof. § 22972, subd. (a).)

FISCAL EFFECT: Unknown**COMMENTS:**

- 1) **Author's Statement:** According to the author, "The misuse of flavored nitrous oxide is a growing public safety concern, particularly among young people, who are most vulnerable to its dangerous effects. Studies have shown a rise in inhalant use, especially among minority adolescents and youth from lower-income backgrounds, exacerbating existing health disparities. Illicit distribution of nitrous oxide not only endangers individual health but also contributes to impaired judgment, leading to accidents and broader community harm."

"AB 1107 addresses this issue by strengthening enforcement against businesses that violate nitrous oxide distribution laws. By imposing meaningful consequences—such as license suspension and ineligibility for new licenses—on repeat offenders, this legislation deters illegal sales and limits access to this hazardous substance. These measures are essential in reducing health inequities and protecting at-risk youth from preventable harm."

"The FDA has already issued an advisory warning about the dangers of inhaling nitrous oxide, underscoring the urgent need for action. AB 1107 enhances public safety by holding violators accountable, suspending licenses for repeat offenders, and ensuring that businesses operate responsibly. By restricting access to these dangerous products, this legislation directly addresses a growing public health crisis and safeguards California's youth and communities."

- 2) **Prohibition on Sale of Nitrous Oxide:** Existing law prohibits possessing nitrous oxide with the intent inhaling the gas for the purpose of causing a condition of intoxication, or who knowingly and with the intent to use nitrous oxide illegally and is under the influence of nitrous oxide or any material containing nitrous oxide is guilty of a misdemeanor. (Pen. Code, § 381b.) Penal Code section 381c prohibits any person from selling or furnishing any device, canister, tank, or receptacle either exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years of age is guilty of a misdemeanor. (Pen. Code, § 381c, subd. (a).) This section is expressly aimed at businesses that sell nitrous to young people knowing they would use it for an illegal purpose. Penal Code section 381d criminalizes sale of nitrous to a person that suffers death or bodily injury. Both 381c and 381d are misdemeanors punishable by up to six months in the county jail, by fine, or both.

When a person sells or furnishes nitrous oxide where the seller knows or reasonably should know, a person under the age of 18 would use it for an illegal purpose, the court is required to order the suspension of the business license, for a period of up to one year, if the person

who knowingly sold or furnished nitrous to a person under the age of 18 after having been previously convicted of this offense, unless the owner of the business license can demonstrate a good faith attempt to prevent illegal sales or deliveries by the owner's employees. (Pen. Code, 381c, subd. (e).)

- 3) **Cigarette and Tobacco Products Licensing Act of 2003:** In 2003, AB 71 (J. Horton) Chapter 890, Statutes of 2003 enacted the Cigarette and Tobacco Products Licensing Act (CTPLA), which established a statewide licensure program administered by Board of Equalization (BOE) to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Prior to the bill, BOE's Investigations Division had been encountering a large number of cigarettes and tobacco product distributors who were unlicensed. The purpose for being unlicensed is to conceal the nature of their business and to evade the tax. These unlicensed distributors normally maintain minimal assets and are typically transient, which hinders BOE's ability to collect the taxes due and payable.

The Act requires every retailer, distributor, wholesaler, manufacturer and importer to obtain and maintain a license to engage in the sale of cigarettes or tobacco products. Currently, BOE has approximately 38,000 retailers and 1,000 distributors and wholesalers licensed to engage in the sale of cigarettes and tobacco products in California. A distributor and wholesaler license is valid for a calendar year upon payment of a fee of \$1,000 per location, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

Violations of the CTPLA include, in part, the following: (a) Possession, storing, owning, or has made sales of an unstamped package of cigarettes bearing a counterfeit California tax stamp or tobacco products on which tax is due but has not been paid; (b) sales of cigarettes or tobacco products to any distributor, wholesaler, importer, retailer, or any other person who is not licensed or whose license has been suspended or revoked; (c) retailer and wholesaler purchases of cigarette or tobacco products from any person who is not licensed or whose license has been suspended or revoked; (d) distributor purchases of cigarettes or tobacco products from any person who is required to be licensed pursuant to the CTPLA but who is not licensed or whose license has been suspended or revoked; (e) failure to maintain records or make such records available to BOE and law enforcement agency, as specified; (f) a person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked; and (g) failure to allow an inspection.

- 4) **Practical Considerations:** This bill purports to strengthen enforcement against businesses that sell nitrous oxide for illegal purposes by punishing those business owners that do so. First, the only criminal conviction that CDTFA is able to take action on pursuant to the CTPLA are violations of the Revenue and Taxation Code and portions of the Business & Professions Code related to issuances of licenses to sell cigarettes and tobacco products. According to CDTFA, it does not receive information from the court about any other convictions. In fact, it does not receive information about the existing provision in Penal Code section 381c related to suspending a business license when a business is convicted of the illegal sale of nitrous. In order for this bill to have any effect on a CTPLA license, CDTFA would have to receive detailed court notifications that do not currently exist. In most cases, currently, CDTFA knows about violations of the Revenue & Taxation Code and the

Business & Professions Code because it conducts the investigation. It appears that, as drafted, this bill would have no actual effect.

Furthermore, this bill generally refers to “business licenses, but does not specifically specify CTPLA licenses. This makes it more difficult for a court to notify the correct licensing agency even when required because there are numerous state agencies that license businesses. In addition to CDTFA, the Department of Consumer Affairs, and the Department of Alcohol Beverage Control, both provide business licenses. If the author decides the best course to punish businesses specifically selling tobacco products, it would have to specify that type of license.

Second, any business facing licensing suspension is entitled to due process. Business & Professions Code section 22973.1 outlines the notice and appeal process. Any action on either a business’ request for a license to sell tobacco products or a decision to suspend or revoke a license to sell tobacco must follow specific due process requirements. Given that CDTFA does not receive any notification of conviction for unlawful sale of nitrous, it would not have any ability to provide notice and a hearing before taking on a license or application for license.

Third, Penal Code section 381d uses the criminal knowledge element that the defendant knew or had reason to believe that a person obtaining the nitrous oxide would use it for intoxication and proximately causes death or serious bodily injury. This bill mandates license suspension for one year if the seller has a prior conviction for unlawful sale of nitrous and is not bale to demonstrate good faith. However, in order to prove the criminal knowledge requirement necessary to get a conviction for this offense, there cannot be any good faith. Also, if a person has been twice convicted of the same offense, it seems unlikely good faith would be an issue.

Finally, this bill states any business that does not properly record any sale of nitrous suffer a suspended business license. Penal Code section 381e requires each person dispensing or distributing nitrous record the transaction. It also states:

The person dispensing or distributing the nitrous oxide shall require the purchaser to sign the document and provide a complete residential address and present a valid government-issued photo identification. The person dispensing or distributing the nitrous oxide shall sign and date the document and shall retain the document at the person’s business address for one year from the date of the transaction. The person shall make the documents available during normal business hours for inspection and copying, upon presentation of a duly authorized search warrant, by officers or employees of the California State Board of Pharmacy or of other law enforcement agencies of this state or the United States.

It is not clear if the Board of Pharmacy routinely reviews these records and there do not appear to be any regulations directly on point as to when and under what circumstances the Board of Pharmacy would notify CDTFA that a business did not keep proper records of nitrous sales, thus requiring suspension of their business license. Also, as noted above, the proposed amendment to Penal Code section 381e is modeled after the language in penal Code section 381c which only generally refers to a “business license.” Since “business license is not defined, it is not clear which government regulatory agency would be

responsible for suspending the “business license.” Therefore, it is not clear this penalty will be of any value.

- 5) **Argument in Support:** According to the *County of Humboldt*: “Humboldt County, like communities across the state, has experienced great harm from the sale of nitrous oxide for illegal use by licensed retailers. Among Humboldt County Medi-Cal beneficiaries who sought treatment between 2020 and 2023, roughly 10% identified nitrous or related nitrous inhalants as their drug of choice. The lack of enforcement mechanisms against the retailers who knowingly sell nitrous oxide for illicit use in current statute has resulted in a “toothless” state ban. AB 1107 is a practical and necessary step that reaffirms California’s commitment to safe and healthy communities.”
- 6) **Argument in Opposition:** None on file.

7) **Prior Legislation:**

- a) AB 1735 (Hall), Chapter 458, Statutes of 2014, makes 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 will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately cause great bodily injury or death to himself/herself, or any other person.
- b) AB 1015 (Torklason), 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.

REGISTERED SUPPORT / OPPOSITION:

Support

County Health Executives Association of California (CHEAC)
County of Humboldt

Opposition

None

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