

Date of Hearing: April 7, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2076 (Lowenthal) – As Amended March 23, 2026

As Proposed to be Amended

SUBJECT: THE PARENT’S ACCOUNTABILITY AND CHILD PROTECTION ACT:
NITROUS OXIDE

KEY ISSUES:

- 1) SHOULD NITROUS OXIDE BE INCLUDED UNDER THE PARENT’S ACCOUNTABILITY AND CHILD PROTECTION ACT (PACPA) TO REQUIRE SELLERS TO COMPLY WITH AGE-VERIFICATION REQUIREMENTS BEFORE SELLING THE PRODUCT?
- 2) SHOULD COURTS BE AUTHORIZED TO AWARD A CIVIL PENALTY FOR A VIOLATION OF PACPA OF UP TO \$250,000?

SYNOPSIS

The Parent’s Accountability and Child Protection Act imposes age-verification requirements on sellers of certain products that minors are prohibited from purchasing. The author and sponsors contend that despite PACPA’s prohibitions, minors have continued to purchase prohibited products, particularly online. In particular, it seems that minors have been able to purchase nitrous oxide online. This bill proposes to amend PACPA in two main ways: include nitrous oxide under its list of more-dangerous products requiring stricter age-verification compliance, and expand the Act’s penalty provisions to encourage public prosecutors to bring claims to enforce against violations. Amendments taken in the previous Committee inadvertently left in the bill’s definition of “online marketplace.” In order to fully capture the intent of the original amendments, the author is proposing to further amend this bill to remove that definition which is reflected in the SUMMARY section of this analysis.

This bill is sponsored by the Children’s Advocacy Institute. It is supported by a number of local governments, labor unions, law enforcement organizations, the California District Attorneys Association, the San Diego County District Attorney’s Office, the Internet Accountability Project, and the Jewish Family and Children’s Services of San Francisco, the Peninsula, Marin and Sonoma Counties. It is opposed by the California Justice Association of California (CJAC). The California Chamber of Commerce, the California Retailers Association, the Computer and Communications Industry Association, Internet Works, and TechNet have all taken a position of oppose unless amended. The bill was previously heard by the Assembly Committee on Privacy and Consumer Protection where it was approved on a vote of 12-2.

SUMMARY: Adds nitrous oxide to the list of highly dangerous products that are illegal to sell to minors under PACPA and modifies the existing civil penalty structure for businesses that violate PACPA. Specifically, **this bill:**

- 1) Adds nitrous oxide to the list of highly dangerous products that are illegal to sell to minors under PACPA.
- 2) Prohibits the use of gift cards to make a purchase of a highly dangerous product under PACPA.
- 3) With respect to a civil action under PACPA, does the following:
 - a) Makes the civil penalty \$7,500 instead of *up to* \$7,500.
 - b) Grants courts discretion to increase the civil penalty to up to \$250,000 if the defendant's revenues in the prior year were over \$25,000,000 and the court finds that increasing the penalty is necessary to deter future violations.
 - c) Authorizes public prosecutors to seek injunctive relief and attorney's fees.

EXISTING LAW:

- 1) Establishes Parents Accountability and Child Protection Act (PACPA), which requires sellers of specified products or services that are illegal to sell to minors to take reasonable steps to ensure that the purchaser is of legal age at the time of the purchase or delivery, including but not limited to verifying the age of the purchaser. (Civil Code Section 1798.99.1 (a). All further statutory references are to the Civil Code unless otherwise noted.)
- 2) Provides that reasonable steps with respect to certain products banned for minors – including spray paint, dangerous fireworks, and etching cream – include:
 - a) The provision of a government-issued identification, subject to all laws governing retention, use, and disclosure of personally identifiable information;
 - b) Requiring the purchaser to use a nonprepaid credit card for an online purchase;
 - c) Implementing a system that restricts individuals with accounts designated as minor accounts from purchasing the prohibited products; and
 - d) Shipping the product or service to an individual who is of legal age. (Section 1798.99.1 (a)(2), (c).)
- 3) With respect to other products that are banned and highly dangerous for minors – including firearms, dangerous weapons, BB guns, and tobacco – limits the reasonable steps for verifying the minor's age to 2(a) and 2(d). (Section 1798.99.1 (a)(3), (d).)
- 4) Provides that reasonable steps do not include consent obtained through the minor. (Section 1798.99.1 (a)(4).)
- 5) Provides that a seller's reasonable and good faith reliance on bona fide evidence of the purchaser or recipient's age constitutes an affirmative defense to liability under these provisions. (Section 1798.99.1 (a)(5).)

- 6) Prohibits a person or business subject to 1) from retaining, using, or disclosing any information it receives from a purchaser or recipient in an effort to verify age for any purpose other than as required by law. (Section 1798.99.1 (a)(6).)
- 7) Subjects a person who violates PACPA to a civil penalty of up to \$7500 in actions brought by public prosecutors. (Section 1798.99.1 (d).)
- 8) Provides that “nitrous oxide” refers to any of the following substances: N₂O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas. Excludes the sale of nitrous oxide contained in food products for use as a propellant. (Penal Code Section 381c (a).)
- 9) Provides that every person who sells, furnishes, administers, distributes, gives away, or offers to sell, furnish, administer, distribute, or give away 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 of age is guilty of a misdemeanor. (Penal Code Section 381c (b).)
- 10) Requires a court to order the suspension of the business license, for a period of up to one year, of a person who knowingly violates this section after having been previously convicted of a violation of 9), unless the owner of the business license can demonstrate a good faith attempt to prevent illegal sales or deliveries by the owner’s employees. (Penal Code Section 381c (e).)
- 11) Excludes from 9) any person who administers nitrous oxide for the purpose of providing medical or dental care, if administered by a medical or dental practitioner licensed by this state or at the direction or under the supervision of a practitioner licensed by this state. (Penal Code Section 381c (f).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: Enacted in 2018, AB 2511 (Chau) Chap. 872, Stats. 2018, established the Parent’s Accountability and Child Protection Act (PACPA). As detailed in the legislative history, the purpose of the statute was to protect children by ensuring they are unable to buy items they are not legally allowed to purchase. Under the existing statute, businesses in California that make certain products available that are illegal for purchase by a minor must take “reasonable steps” to ensure the purchaser is of legal age prior to purchase or delivery, including but not limited to, verifying the purchaser’s age. PACPA authorizes public prosecutors to enforce against violations by bringing a civil claim against a business in violation of the statute’s requirement and collecting civil penalties of up to \$7,500. According to the author:

Young people represent a disproportionate share of recreational nitrous oxide users, drawn in by its low cost and easy availability. Repeated recreational use carries severe consequences, including nerve damage, paralysis, loss of consciousness, and in some cases, death. Yet nothing in current law requires online sellers to verify a buyer's age before this dangerous gas lands at their door – leaving a critical gap in protections for California's children.

AB 2076 closes that gap. This bill adds nitrous oxide to the list of products requiring age verification for online purchase under California's Parents' Accountability and Child Protection Act. However, preventing access is only part of the solution. When businesses fail to follow the law, there must be real consequences. The bill strengthens enforcement by

increasing penalties for sellers who fail to comply with age verification requirements, helping protect children from products that can severely harm them.

PACPA divides products into two categories: those that pose some danger to minors and those that pose an extreme danger to minors. The first category captures items such as spray paint, fireworks, tanning devices, and dietary supplements. The second includes firearms; BB guns; ammunition; tobacco and tobacco products; e-cigarettes; and “a less than lethal weapon” such as a taser. PACPA requires all sellers to take “reasonable steps” to ensure the purchaser is an adult, but what may constitute a “reasonable step” differs for the two categories. Sellers of products in the “less dangerous” category have more options, such as requiring the use of a nonprepaid credit card for an online purchase or implementing a process that restricts individuals with an account designated for a minor to purchase such products. Sellers of “more dangerous” products must verify the buyers age by either requiring the buyer to input or otherwise provide their government-issued ID or require the product to be shipped to an adult.

This bill modifies PACPA in two principal ways. First, it includes nitrous oxide under PACPA’s list of “more dangerous” products, thereby limiting sellers of nitrous oxide to the more exclusive list for age-verification and theoretically bolstering the likelihood that sellers will actually only sell nitrous oxide to those legally authorized to buy it. The bill also prohibits online sellers of “more dangerous” products from accepting payment via gift card.

Second, in an effort to encourage all businesses to comply with PACPA’s requirements AB 2076 also strengthens the Act’s enforcement provisions. As the law currently stands, a seller who fails to comply with PACPA’s requirements risks liability for a civil penalty of up to \$7,500 per violation in a claim brought by a public prosecutor. As the sponsors point out, the risk of a \$7,500 penalty may not constitute sufficient deterrence to engage in effective age-verification practices. The revenue they may gain from selling products that are prohibited for minors may outweigh any risk of a meager \$7,500 civil penalty. Moreover, the cost of successful litigation for a public prosecutor may far outstrip the existing penalty. Recognizing that higher recovery may serve to encourage public prosecutors to bring litigation to enforce against violations of PACPA, thereby serving as a greater deterrence for businesses to wave away PACPA’s age verification requirements, this bill would increase the available civil penalty and expand the types of recovery a court could award a successful plaintiff. The bill would guarantee the \$7,500 civil penalty for an initial violation, rather than make it discretionary. Additionally, for higher-earning businesses, the bill would grant courts discretion to increase the \$7,500 penalty up to \$250,000 for each violation if the court believes that a higher penalty is necessary to deter future violations. Third, the bill authorizes public prosecutors to seek both injunctive relief and attorney’s fees and costs, to help offset the price of litigation.

A number of business organizations have modified their opposition to a position of oppose-unless-amended. The California Retailers Association, the Computer and Communications Industry Association, InternetWorks, and TechNet had all formally opposed a prior version of this bill. They had raised concerns about the original version’s heightened penalties for online marketplaces, as well as a blanket prohibition on the sale of any item listed under PACPA by an online marketplace. However, amendments taken in the Assembly Committee on Privacy and Consumer Protection which were negotiated in conjunction with this Committee’s staff appear to have assuaged most, although not all, of their concerns. The organizations remain concerned about the bill’s new restriction on the use of gift cards to purchase items from the “more dangerous” category.

They also request “language that explicitly confirms that the bill’s associated penalties apply uniformly to all retailers.” Although it is not explicitly stated, it seems this concern may stem from the bill’s reference to “online marketplace,” that was originally incorporated to allow for the distinct penalties and prohibitions on those online sellers. This definition was left in after the latest round of amendments as an oversight, and will be corrected by striking subdivision (f)(2) in its entirety as follows:

(f) For purposes of this section, the following definitions apply:

(1) “Government-issued identification” means any of the following:

(A) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, an identification card or a valid motor vehicle operator’s license, including licenses or identification cards issued pursuant to Section 12801.9 of the Vehicle Code, that contains the name, date of birth, description, and picture of the person.

(B) A valid passport issued by the United States or by a foreign government.

(C) A valid identification card issued to a member of the United States Armed Forces that includes the date of birth and picture of the person.

(D) A valid consular identification document.

(E) An identification card issued by a federally recognized tribal government.

~~(2) (A) “Online marketplace” means a consumer directed, electronically accessed platform that includes features that allow for, facilitate, or enable a third-party seller to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer product in this state.~~

~~(B) Notwithstanding subparagraph (A), “online marketplace” shall not include a platform that generated less than one billion dollars (\$1,000,000,000) in gross revenue during the preceding calendar year.~~

~~(C) For purposes of this paragraph, “platform” includes a social media platform as defined in Section 22675 of the Business and Professions Code.~~

The Civil Justice Association of California (CJAC) remains opposed. Despite the significant amendments taken in the prior Committee, CJAC remains opposed. They argue that, while significantly lower than the bill’s original authorized penalties, the increase in penalties for certain business from \$7,500 to \$250,000 is inappropriate. First, it is important to note that the increased penalty up to \$250,000 is not a required increase, but rather the bill would give a judge *discretion* to increase the penalty if it found that doing so was necessary to deter future violations. Considering that a \$7,500 penalty is pennies to some retailers, it seems reasonable to allow a case-by-case determination, including consideration of whether a single violation is part of a greater pattern of practice for the retailer, to ensure the intent of the Act is achieved. It is also reasonable to assume that not every retailer will be hit with a higher penalty, particularly if the sale occurred despite the retailer employing reasonable steps to verify the purchaser’s age.

Second, CJAC contends that the bill's new prohibition on the use of gift cards by a buyer of any age for purchases of prohibited products constitutes a violation of principles of equal protection. Assuming that the equal protection violation is suffered by the user of an online gift card because of their gift card use, the statute would need to meet the rational basis standard of review to survive constitutional scrutiny. It seems reasonable that a court may find that the state has a legitimate interest in protecting the safety of minors and that a law that prohibits the use of gift cards for online purchases, which pose more challenges to age verification, is rationally related to that interest. A similar argument could be made if the equal protection claim is made as to the online sellers who would be prohibited from accepting payment via gift card.

ARGUMENTS IN SUPPORT: This bill is sponsored by the Children's Advocacy Institute. It enjoys broad support from local governments, children's safety advocacy organizations, law enforcement, and a number of labor unions. In support of the bill the sponsor submits:

WHY HAS CURRENT LAW NOT WORKED? AB 2076 PROPOSES ENFORCEMENT REFORM

The maximum financial penalty under current law that can be obtained (\$7,500) is about half of what is available in small claims court against a natural person, woefully insufficient for a public prosecutor – the only enforcers expressly permitted to enforce the law – to divert its limited resources to sue a corporation with infinite resources.

It is actually quite easy to quantify why this has not worked. Consider: the maximum financial penalty for littering in California is \$1,000, 1.6% of an average Californian's income.

In feckless contrast, \$7,500 for violating a far more serious law protecting children is .00000125% of \$600 billion, Amazon's 2024 income from sales. To have a penalty for Amazon violating a child-protection law roughly match the penalty for an average Californian for littering, the maximum penalty for Amazon would have to be 1.6% of \$600 billion, *or about \$9 billion dollars*.

AB 2076 does not propose going anywhere near that far, but it does, as proposed to be amended after collaborations with the Assembly Privacy and Judiciary Committees, propose two kinds of enforcement reforms:

First, the bill will prohibit the use of gift cards to purchase the age-restricted products that are inherently dangerous – even potentially lethal – to children. In this way, children cannot use gift cards online to evade age verification.

Second, the bill will offer much more substantial financial consequences for corporations that earn more than \$25 million a year. A court will be empowered to award the prosecutor up to \$250,000 if the court finds such amounts are needed to deter future violations. The bill will also permit injunctive relief to enforce the law and a prevailing prosecutor to be reimbursed for hours and costs associated with enforcing the law.

ARGUMENTS IN OPPOSITION: This bill is opposed by the Civil Justice Association of California (CJAC). They submit:

Disproportionate Liability

AB 2076 singles out online marketplaces by prohibiting the sale of certain products on those platforms, while permitting the same products to be sold through direct-to-consumer websites and brick-and-mortar retailers. The bill further imposes dramatically different penalty structures depending on the sales channel, exposing online marketplaces to civil penalties of up to \$1,500,000 per violation, while violations involving direct-to-consumer or brick-and-mortar sales are subject to penalties of up to \$7,500 per violation. As a result, a business may lawfully sell a product through its own website or physical store yet face complete prohibition and substantially greater financial liability for offering that identical product through a third-party online marketplace.

Equal Protection Concerns

This disparate treatment raises significant concerns under the Equal Protection Clauses of the U.S. and California Constitutions. AB 2076 distinguishes between sellers based solely on the channel through which a product is sold, rather than by the nature of the product or the underlying conduct. As a result, similarly situated businesses are subject to materially different restrictions and penalties without a clear or rational basis for that distinction. This is just the situation that is prohibited by the Equal Protection Clauses.

The controls used by online retailers, including online marketplaces, to prevent sales to minors are comparable to those used by brick-and-mortar establishments and direct-to-consumer online retail settings. Age verification methods, however, are not infallible even in brick-and-mortar settings. It is therefore inappropriate to single out online marketplaces for heightened penalties and liability where similar risks exist across all sales channels.

Broad Scope

AB 2076 applies a single penalty framework across a wide range of products without differentiation. Treating dissimilar products under the same approach raises the question of how the current language is appropriately tailored or evidence-based. For example, the bill applies the same regulatory structure to fundamentally different product categories, including items such as nitrous oxide, dietary supplements, and firearms, without distinguishing between varying levels of risk or existing regulatory frameworks.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Advocacy Institute (sponsor)
American Academy of Pediatrics, California
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition for Children's Safety and Health
California Coalition of School Safety Professionals
California District Attorneys Association
California Labor Federation, AFL-CIO
California Narcotic Officers' Association
California Reserve Peace Officers Association

Children Now
Claremont Police Officers Association
Consumer Protection Policy Center/USD School of Law
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Internet Accountability Project
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Orange; County of
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Teamsters California
United Food and Commercial Workers (UFCW)

Opposition

Civil Justice Association of California

Oppose unless amended

Calchamber
California Retailers Association
Computer and Communications Industry Association
Internet Works
Technet

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334