

ASSEMBLY THIRD READING

AB 2076 (Lowenthal)

As Amended April 9, 2026

Majority vote

SUMMARY

Expands the Parent's Accountability and Child Protection Act (PACPA) by (1) adding nitrous oxide to the list of highly dangerous products that are banned for minors; (2) prohibiting the use of gift cards to purchase such products; and (3) enhancing liability for businesses that make over \$25 million a year.

Major Provisions

- 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.

COMMENTS

The Parent's Accountability and Child Protection Act. PACPA requires sellers of 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. Reasonable steps include (1) the provision of a government-issued identification, subject to all laws governing retention, use, and disclosure of personally identifiable information, (2) requiring the purchaser to use a nonprepaid credit card for an online purchase, or (3) implementing a system that restricts individuals with accounts designated as minor accounts from purchasing the prohibited products. The act prohibits a person from retaining, using, or disclosing any information it receives from a purchaser or recipient to verify age, unless required by law. Violators are liable for a civil penalty of up to \$7500 in actions brought by public prosecutors.¹

A 2025 report by the bill's co-sponsor, the Children's Advocacy Institute at the University of San Diego School of Law, found that PACPA is being flouted by one particular large online platform. The report, entitled "Amazon: Breaking the Law and Placing Children at Risk?" concludes "When it comes to many products that are illegal to sell to minors – some of which are

¹ Civ. Code Section 1798.99.1.

potentially dangerous to children – Amazon is not engaging in any of the required steps to ensure children cannot buy certain products." Researchers found that the platform:

Accepted fabricated credentials, including incorrect driver's license numbers paired with made-up birthdates, to complete age verification.

- 1) Permitted payment with prepaid credit cards and gift cards for restricted items.
- 2) Ceased prompting for age verification altogether after a single transaction, allowing subsequent purchases of restricted items with no verification.
- 3) Delivered dangerous products, including BB weapons, with no adult signature required.

Adds nitrous oxide to the list of highly dangerous products under PACPA. AB 2076 adds to PACPA's list of banned products nitrous oxide. Although nitrous oxide has legitimate uses in food preparation and dentistry, when inhaled it can have an intoxicating effect. The misuse of nitrous oxide can entail serious health consequences, including loss of consciousness, paralysis, spinal cord and brain damage, and death.²

The bill incorporates an existing definition of "nitrous oxide" under Penal Code section 381c, which provides that the term refers to any of the following substances: N₂O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas. That section expressly excludes the sale of nitrous oxide contained in food products for use as a propellant. This definition is incorporated into PACPA's provisions governing highly dangerous products, such as guns, ammunition, other weapons, and tobacco. Age verification under existing law for such products can only be accomplished by provision of a government-issued identification or shipping the product or service to an individual who is of legal age.

Prohibits the use of gift cards to purchase highly dangerous products. The aforementioned report highlights how pre-paid gift cards can be used to make purchases without having to provide identifying information, leading to an easy end-run around age verification requirements. This bill would, for the list of highly dangerous banned products under PACPA, prohibit the use of gift cards for the purchase of such products, closing a significant loophole.

Enhances liability for larger businesses. According to the sponsors, PACPA's current \$7,500 civil penalty cap is insufficient to ensure meaningful compliance with PACPA, undermining its effectiveness on the platforms where the law's impact ought to be its greatest. To increase accountability under PACPA, the bill (1) makes the civil penalty \$7,500 instead of capping it at that amount; (2) 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; and (3) authorizes public prosecutors to seek injunctive relief and attorney's fees.

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,

² US Food & Drug Administration, "FDA Advises Consumers Not to Inhale Nitrous Oxide Products," <https://www.fda.gov/food/alerts-advisories-safety-information/fda-advises-consumers-not-inhale-nitrous-oxide-products>.

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.

Arguments in Support

Children's Advocacy Institute at the University of San Diego School of Law, co-sponsors of the bill, write:

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] 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.

[. . .]

In response to the growing concern over the use of nitrous oxide as a recreational drug, AB 2076 amends Section 1798.99.1 to include nitrous oxide among the inherently dangerous products for which a retailer must verify the age of a purchaser or else face a civil penalty. And, inspired by the willingness of the giant company to violate California law, AB 2076 will take the additional step of preventing inherently child-endangering, age-restricted items – laughing gas, weapons, tobacco products – from being bought with a gift card. Children cannot lawfully obtain credit cards to buy these items on Amazon, but they can lawfully buy gift cards with their allowance money. Thus, under Amazon's nonexistent age verification, children can use these cards to buy these dangerous products. By enacting a bright-line rule that these products cannot be bought with gift cards, AB 2076 facilitates enforcement of the most important age-verifying laws by making illegal the easiest way for both Amazon and children to evade them.

Arguments in Opposition

Writing about the prior version of the bill, TechNet lists the following concerns:

Limiting Legitimate Commerce

The bill is framed around adding nitrous oxide to the list of prohibited items that minors are prohibited from purchasing online. However, AB 2076 extends well beyond this new addition and would create sweeping consequences for lawful online commerce in California. The bill as written would prevent online marketplaces from facilitating lawful sales of numerous regulated products that adults are legally permitted to purchase. In practice, this would strongly limit legitimate commerce in California, particularly for transactions conducted through online marketplaces.

Targeting Online Retailers

The bill raises significant concerns regarding the targeting of online marketplaces that facilitate the sales of items and brick-and-mortar stores and direct to consumer online retailers. The bill as written appears to apply only to online marketplaces, while traditional retail stores and direct to consumer online retailers would continue operating under the existing framework. If the goal is to address youth access and safety, it is unclear why online retailers should face dramatically different requirements than other retailers selling the same products. This uneven structure risks distorting the marketplace and unfairly favoring certain business models over others.

Consequences on Businesses

AB 2076 would have significant consequences for businesses that rely on online marketplaces to reach customers and engage in lawful commerce. Many businesses, particularly small and medium sized companies depend on established online marketplaces to sell their products because these platforms provide the infrastructure for payments, logistics, fraud prevention, and customer reach that would otherwise be difficult and costly to build independently. Not all businesses have the resources or technical capacity to operate and maintain their own direct-to-consumer e-commerce websites. If online marketplaces are forced to prohibit entire categories of lawful products due to the bill's sweeping restrictions and disproportionate penalties, many legitimate sellers could lose access to their primary sales channels. Thus, AB 2076 could significantly disrupt lawful commerce in California, reduce opportunities for small businesses, and limit consumer access to products otherwise legal to sell and purchase.

Extraordinary Penalties

AB 2076 would impose extraordinary and disproportionate penalties on online markets. Under the existing statute, violations are subject to civil penalties of up to \$7,500 per violation. Under AB 2076, violations are subject to civil penalties of up to \$1.5 million per violation, an increase of up to 200 times the current level. While the civil penalty of \$7,500 would remain for individuals and brick-and-mortar retailers. Given the scale of modern online marketplaces and the number of third-party sellers they host, such penalties would force platforms to remove entire categories of products rather than attempt to facilitate lawful, compliant sales.

Aligning with other states on Nitrous Oxide

TechNet strongly support policies that protect minors while preserving lawful commerce and encouraging responsible compliance practices. If the Legislature wishes to address the sale of nitrous oxide, specifically, we encourage the committee to examine how other states (Louisiana and soon to be Virginia) have approached this issue to avoid creating a fragmented patchwork of policies across jurisdictions. A more targeted approach that addresses the specific concern without broadly restricting lawful commerce would better serve consumers and businesses.

FISCAL COMMENTS

According to the Appropriations Committee:

- 1) Unknown but likely minor costs to the Department of Justice (General Fund) to the extent the bill's enhanced penalty and fee-recovery provisions lead public prosecutors to bring enforcement actions under PACPA. Under existing law, PACPA is enforceable only by public prosecutors, and no data is publicly available on the number of enforcement actions brought under the act since it took effect in 2020. The sponsor contends that the current \$7,500 maximum penalty is insufficient to incentivize public prosecutors to divert resources to PACPA enforcement. By making the \$7,500 penalty mandatory, authorizing penalties up to \$250,000 for larger businesses, and allowing recovery of attorney's fees and costs, the bill is designed to make PACPA enforcement self-sustaining for public prosecutors. To the extent the bill succeeds in generating enforcement activity, any costs to DOJ would likely be offset by penalty revenue and fee recovery.
- 2) Cost pressures (Trial Court Trust Fund) of an unknown but potentially significant amount to the courts, possibly in the hundreds of thousands of dollars annually. This bill expressly authorizes public prosecutors to bring civil enforcement actions pertaining to the sale of nitrous oxide to minors. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.

VOTES

ASM PRIVACY AND CONSUMER PROTECTION: 12-2-1

YES: Bauer-Kahan, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Patterson, Pellerin, Petrie-Norris, Ward, Wicks, Wilson

NO: Macedo, DeMaio

ABS, ABST OR NV: Hoover

ASM JUDICIARY: 11-0-1

YES: Kalra, Lee, Bryan, Connolly, Dixon, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

ABS, ABST OR NV: Macedo

ASM APPROPRIATIONS: 12-0-3

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

ABS, ABST OR NV: Hoover, Ta, Tangipa

UPDATED

VERSION: April 9, 2026

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