

Date of Hearing: June 23, 2026

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 758 (Umberg) – As Amended January 22, 2026

NOTE: This bill is double referred and if passed by this Committee will be re-referred to the Assembly Committee on Public Safety.

SENATE VOTE: 40-0

SUBJECT: Public health: nitrous oxide

SUMMARY: Prohibits a retailer licensed to engage in the sale of cigarettes or tobacco products from selling nitrous oxide at a retail location.

EXISTING LAW:

- 1) Establishes the California Department of Tax and Fee Administration (CDTFA) within the Government Operations Agency. (Government Code §§ 15570 *et seq.*)
- 2) Enacts the Cigarette and Tobacco Products Licensing Act of 2003 to provide for the licensing of manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. (Business and Professions Code (BPC) §§ 22970 *et seq.*)
- 3) Provides for specified application requirements for a retailer to obtain a license to engage in the sale of cigarettes or tobacco products and specifies causes for denial of a license, including the conviction of specified felonies. (BPC § 22973.1)
- 4) Specifies causes for suspension or revocation of a retailer’s license to engage in the sale of cigarettes or tobacco products by the CDTFA, including violations of laws relevant to the scope of the license. (BPC § 22980.3)
- 5) Provides that any person who possesses nitrous oxide with the intent to breathe, inhale, ingest for the purposes of causing intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of changing, distorting, or disturbing the audio, visual, or mental processes, or who is intentionally under the influence of nitrous oxide, is guilty of a misdemeanor punishable by imprisonment in county jail for up to six months, by a fine not to exceed \$1,000, or by both imprisonment and a fine. (Penal Code (PEN) § 381b)
- 6) Defines “nitrous oxide” as N₂O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas; 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 for up to six months, by a fine not to exceed \$1,000, or by both imprisonment and a fine; requires the court to consider ordering community service as a condition of probation. (PEN § 381c)

- 7) Makes it a misdemeanor punishable by imprisonment in a county jail for up to 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 themselves or any other person. (PEN § 381d)
- 8) Requires a person who distributes or dispenses nitrous to record each transaction involving nitrous oxide in a physical written document, which both that person and the purchaser must sign, and which that person must make available during normal business hours to members of law enforcement or to the California State Board of Pharmacy. (PEN § 381e(a))
- 9) Specifies that the following the document used to record each 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.(PEN § 381e(b))
- 10) Exempts from these requirements any person who administers nitrous oxide for the purpose of providing medical or dental care, if administered by a licensed medical or dental provider or at the direction or under the supervision of a licensed practitioner. (PEN § 381e(c))
- 11) Exempts from these requirements the sale of nitrous oxide contained in food products for use as a propellant. (PEN § 381e(d))
- 12) Exempts from these requirements the sale of nitrous oxide by a wholesaler licensed by the California State Board of Pharmacy or a specified manufacturer. (PEN § 381e(e))

THIS BILL:

- 1) Prohibits a retailer licensed under the Cigarette and Tobacco Products Licensing Act of 2003 from selling nitrous oxide, as defined.
- 2) Provides that for purposes of the bill, a retailer does not include a grocery store or a general retail merchandise store with a grocery department, as defined.

FISCAL EFFECT: According to the Senate Committee on Appropriations, a prior version of this bill would have resulted in unknown, potentially significant costs for the California Department of Public Health for staff positions to conduct inspections, ensure compliance, and conduct investigations.

COMMENTS:

Purpose. This bill is co-sponsored by the *California Narcotic Officers' Association*, the *California League of Cities*, *County of Orange*, and the *Rural County Representatives of California*. According to the author:

SB 758 aims to address growing public health concerns by regulating a drug that is readily available at gas stations, liquor stores, and tobacco shops. Nitrous oxide has legitimate uses in medicine, dentistry, and food preparation. However, it is also inhaled recreationally by some users, causing long-term neurological effects, paralysis, or even death. Allowing certain retailers to sell nitrous oxide makes the drug dangerously available to recreational users. Cities have already begun passing ordinances to reel in Nitrous Oxide use, but comprehensive legislation at the state level is needed to ensure the safety of all California residents.

Background. Nitrous oxide, or dinitrogen monoxide, is a gaseous chemical compound. Often referred to as “laughing gas,” nitrous oxide has long been used as a form of anesthesia in surgical and dental procedures. It is also commonly used in motor racing as a rapid-burning fuel for internal combustion engines (referred to in that setting as “NOS.”) Nitrous oxide has been approved by the World Health Organization’s Expert Committee on Food Additives as a propellant for food since 1985. The gas is used in aerosol containers to deliver culinary substances through a spray that turns into a foam upon being propelled, such as with cooking sprays and whipped cream. Nitrous oxide works particularly well for this purpose because of its interaction with food ingredients and its effectiveness for turning liquids into foamy sprays.

While most consumers interact with nitrous oxide through consumer products already containing a sprayable substance, pure nitrous oxide may be purchased separately in bulbs or canisters for purposes of recharging dispensers that can then be loaded with home-made whipped products. A popular brand of whipped cream chargers is marketed as “Whip-It!” and can be easily purchased at kitchen supply stores and online retailers. These containers are associated with the inappropriate use of nitrous oxide as a recreational drug, commonly referred to as “whippets.”

The inhalation of nitrous oxide in order to get high is also sometimes called “hippy crack,” “nitro,” “laughing gas,” “the epiphany drug,” “nangs,” or “chargers.” Typically, the user will inflate a balloon with a charging canister and then inhale it, with the gas operating as a dissociative hallucinogen, producing a sense of euphoria. Recreational use of nitrous oxide is not a new phenomenon; affluent members of English society were known to have so-called “laughing gas parties” hosted by chemist Humphry Davy, who is credited with originally discovering the compound.

There are serious health risks associated with the recreational use of nitrous oxide, which can result in serious injury or dangerous activity. Existing law makes it a misdemeanor to possess nitrous oxide with the intent to use it for the purposes of getting high. Additionally, it is a crime to sell, furnish, administer, distribute, give away, or offer nitrous oxide canisters to a person who is under 18 years of age, or to anyone the seller knows intends to use the canisters to get high. Current law also requires a person who dispenses or distributes nitrous oxide to record each transaction in a document signed by both the seller and the buyer, which must inform the buyer that recreational use of nitrous oxide is both a crime and dangerous.

Beyond these legal restrictions, nitrous oxide canisters are legal to purchase and sell for legitimate reasons and are not federally regulated as a controlled substance. It has been contended that while many stores sell nitrous oxide for its intended use—to dispense whipped cream through an aerosol device—it is very unlikely that a consumer who purchases the product from a shop primarily selling cigarettes or tobacco products intends to use the canisters for any purpose other than getting high. However, it has also been noted that nitrous oxide can be purchased from myriad other retailers that are arguably less regulated, including online retailers that do not necessarily engage in age verification or other protections against abuse.

Existing law makes it a crime to engage in certain unlawful conduct relating to the sale of nitrous oxide. First, it is a misdemeanor 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. The defendant can raise a defense that they honestly and reasonably believed that the minor involved in the offense was at least 18 years of age. Beginning in 2010, the court is required to order the suspension of the business license, for a period of up to one year, of a person who knowingly violates this misdemeanor after having been previously convicted of a violation of the same crime.

Additional provisions of law make it a misdemeanor for a retailer to dispense or distribute nitrous oxide to a person who the retailer knows or should know is going to use the nitrous oxide in violation of the law, and that person proximately causes great bodily injury or death to themselves or another person. Retailers are also required to record each transaction involving the dispensing or distribution of nitrous oxide and to make specified disclosures to purchasers, and a violation of required confidentiality relating to information obtained from purchasers is also punishable as a misdemeanor. Unlike the prohibition on sales of nitrous oxide to minors, repeated violations of these additional restrictions and requirements are not subject to mandatory suspension of a business license.

The Cigarette and Tobacco Products Licensing Act of 2003 contains provisions governing the CDTFA's process for licensing and overseeing retailers engaged in the sale of cigarettes and tobacco products. Current law provides that specific violations of the law are cause for the CDTFA to deny an application for an initial or renewed license, and that a license can be suspended or revoked for specified causes. This bill would prohibit a retailer who is licensed by the CDTFA to sell cigarettes and tobacco products from selling nitrous oxide. Grocery stores or general retail merchandise stores with a grocery department would be exempted from this prohibition.

Current Related Legislation. SB 936 (Blakespear) would prohibit the sale of specified nitrous oxide products associated with a greater likelihood of being inappropriately used for direct inhalation of nitrous oxide by the purchaser and establishes penalties for the unlawful sale of those nitrous oxide containers. *This bill is pending in the Assembly Committee on Public Safety.*

SB 1314 (Menjivar) would make it a misdemeanor for a person to possess nitrous oxide with the intent to get high, sell nitrous oxide to a minor, or dispense or distribute nitrous oxide knowing it will be ingested or inhaled to get high in an instance that results in serious harm or death. *This bill is pending in the Assembly Committee on Health.*

Prior Related Legislation. AB 1107 (Flora) of 2025 would have authorized the CDTFA to deny, suspend, or revoke a license for a retailer to sell cigarettes or tobacco products if the retailer has been convicted of violating laws criminalizing the unlawful sale of nitrous oxide, and required the court to order the suspension of the business license, for a period of up to one year, for a retailer that repeatedly violates those laws. *This bill died on suspense in the Assembly Committee on Appropriations.*

SB 193 (Nielsen) of 2019 would have criminalized the sale of nitrous oxide by a tobacco retailer and requires the court to order the suspension of the retailer's business license if convicted. *This bill died on suspense in the Assembly Committee on Appropriations.*

SB 631 (Nielsen) of 2017 would have prohibited a retailer of tobacco products or tobacco-related products from selling or offering to sell nitrous oxide, and made a violation punishable by a civil penalty not to exceed \$2,500. *This bill died in Assembly Committee on Judiciary.*

AB 1735 (Hall), Chapter 458, Statutes of 2014 made it a misdemeanor 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, and that person proximately cause great bodily injury or death to themselves or any other person.

AB 1015 (Torlakson), Chapter 266, Statutes of 2009 made it a misdemeanor to sell or furnish to a person under 18 years of age a canister or device containing nitrous oxide, or a chemical compound mixed with nitrous oxide.

ARGUMENTS IN SUPPORT:

The *League of California Cities* writes in support as a co-sponsor:

Although current law prohibits the sale of nitrous oxide for recreational intoxicating purposes, significant loopholes in the statutory framework allow these products to be easily diverted into the recreational market. For example, nitrous oxide canisters labeled for food preparation are repurposed and resold at various tobacco retail locations. To address this issue, at least twenty-five cities have brought forth ordinances focused on restricting the sale of nitrous oxide in tobacco retail locations that have no real connection to legitimate uses. However, effectively preventing the recreational sale of nitrous oxide will require clear, consistent statewide guidelines.

SB 758 would close the dangerous loophole that allows nitrous oxide to be sold in smoke shops, making it easier for cities to address the troubling proliferation of recreational nitrous oxide related injuries and deaths.

ARGUMENTS IN OPPOSITION:

There is no opposition on file to the current version of the bill.

REGISTERED SUPPORT:

California Narcotic Officers' Association (*Co-Sponsor*)
California League of Cities (*Co-Sponsor*)

County of Orange (*Co-Sponsor*)
Rural County Representatives of California (*Co-Sponsor*)
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California Reserve Peace Officers Association
City of Alameda
City of Carlsbad
City of El Cerrito
City of Garden Grove
City of Irvine
City of Lake Forest
City of Paramount
City of Pico Rivera
City of Rocklin
City of San Buenaventura
City of Seal Beach
City of Sunnyvale
City of Tulare
City of Ventura
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association

REGISTERED OPPOSITION:

None on file

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