

SENATE THIRD READING
SB 758 (Umbert and Menjivar)
As Amended August 13, 2026
Majority vote

SUMMARY

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

Major Provisions

- 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, but does include a convenience store.
- 3) Expressly authorizes a city or county, or city and county to adopt an ordinance imposing greater restrictions on the retail sale of nitrous oxide than those imposed by the bill, provided that the ordinance does not restrict legitimate uses, including, but not limited to, medical, dentistry, food preparation, industrial, manufacturing, and automotive services.

COMMENTS

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 California Department of Tax and Fee Administration's (CDTFA) 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, though convenience stores would be subject to the prohibition.

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."

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.

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, the CDTFA estimates costs of \$159,000 in 2026-27 and \$2,000 in 2027-28 and ongoing for implementation activities, including providing notifications, answering taxpayer inquiries, issuing and processing misdemeanor citations, and license suspensions or revocations after convictions, and handling appeals; the CDTFA states it cannot estimate effects on revenues from lost license fees, court-ordered fines, or losses in sales and use taxes.

VOTES**SENATE FLOOR: 40-0-0**

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNERney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ASM BUSINESS AND PROFESSIONS: 19-0-0

YES: Berman, Addis, Ahrens, Alanis, Bains, Bauer-Kahan, Caloza, Chen, Elhawary, Hadwick, Haney, Hart, Irwin, Jackson, Patterson, Lowenthal, Macedo, Nguyen, Pellerin

ASM PUBLIC SAFETY: 9-0-0

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

ASM APPROPRIATIONS: 11-0-4

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

ABS, ABST OR NV: Hoover, Dixon, Ta, Tangipa

UPDATED

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