

SENATE THIRD READING
SB 936 (Blakespear and Umberg)
As Amended August 17, 2026
Majority vote

SUMMARY

Prohibits 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.

Major Provisions

- 1) Provides that it is unlawful for any person to sell, offer to sell, or distribute any of the following:
 - a) A nitrous oxide container capable of holding more than eight grams of nitrous oxide.
 - b) A nitrous oxide container from which an individual may directly inhale nitrous oxide.
 - c) Nitrous oxide that has, or is marketed as having, the taste or smell of any food, including any fruit, candy, dessert, alcoholic beverage, herb, or spice, that is distinguishable by an ordinary consumer either prior to or during consumption or use of the product.
 - d) Any device that a person knows, or reasonably should know, allows an individual to inhale nitrous oxide from the nitrous oxide container or to hold nitrous oxide released from the nitrous oxide container for purposes of inhalation.
- 2) Exempts from the above prohibitions nitrous oxide or a nitrous oxide container that meets any of the following:
 - a) Has been denatured or otherwise rendered unfit for human consumption or use.
 - b) Is intended and marketed for use by a manufacturer as part of a manufacturing process or industrial operation.
 - c) Is specifically designed and marketed for use in a vehicle to enhance the performance of the vehicle.
 - d) Is sold to a licensed medical, veterinary, or dental practitioner to be administered or prescribed as part of the care or treatment of a disease, condition, or injury.
 - e) Contains less than nine grams of nitrous oxide as a propellant in food or to be used in food preparation for restaurant, food service, or houseware products.
 - f) Is sold by a wholesaler for any purpose listed in this subdivision.
- 3) *Exempts commercially manufactured, sealed finished food products intended for retail sale as food that contain nitrous oxide solely as a propellant for dispensing the food product.*

- 4) Defines "nitrous oxide container" means a device, canister, tank, or receptacle either exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide.
- 5) Expressly provides that sales conducted in person, through the internet, or through any other electronic or digital means are included in the above prohibitions.
- 6) Provides that a violation of the above prohibitions are punishable as an infraction punishable by a fine of not more than \$500 for the first offense, \$1,000 for a second offense, or \$2,000 for a third and subsequent offense.
- 7) Authorizes a court to suspend the business license or license to engage in the sale of cigarettes or tobacco products of a business that violates the above prohibitions.
- 8) *Requires the California Department of Tax and Fee Administration (CDTFA) to deny an application to an applicant, or suspend or revoke a license to a retailer, who violates the bill's prohibitions, as provided.*
- 9) *Authorizes the CDTFA to seize unlawful nitrous oxide products from a retailer.*
- 10) Clarifies that the bill does not limit the authority of a city, county, or city and county to adopt or enforce a local ordinance that further restricts the sale, furnishing, offering, or distribution of nitrous oxide.
- 11) *Provides that any person, distributor, or business found to have violated the bill's prohibitions shall be liable for all reasonable costs incurred by a public agency in the investigation, inspection, seizure, storage, transportation, handling, venting, abatement, disposal, or destruction of nitrous oxide products, nitrous oxide containers, inhalation devices, or related materials involved in the violation.*

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 its use in consumer products already containing the substance intended to be sprayed, 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.

This bill would establish additional restrictions on the sale of nitrous oxide and nitrous oxide containers. Nitrous oxide containers capable of containing more than eight grams, having the taste or smell of food, or allowing for an individual to inhale nitrous oxide would all be

prohibited. The bill would further prohibit the sale of a device that a person knows, or reasonably should know, allows an individual to inhale nitrous oxide from the nitrous oxide container or to hold nitrous oxide released from the nitrous oxide container for purposes of inhalation.

Specific penalties for violations of these prohibitions would additionally be established by this bill. The bill would provide that the sale of a prohibited nitrous oxide product is punishable as an infraction punishable by a fine of not more than \$500 for the first offense, \$1,000 for a second offense, or \$2,000 for a third and subsequent offense. A court would be further authorized to suspend the business license of a business that knowingly violates the bill's prohibitions, as well as a license issued pursuant to the Cigarette and Tobacco Products Licensing Act of 2003.

According to the Author

"SB 936 would prohibit the public sale of nitrous oxide canisters larger than 8 grams, while preserving access for legitimate medical, dental, culinary, and automotive uses. These canisters are increasingly used recreationally by youth and pose serious public safety risks, including impaired driving. SB 936 targets misuse by limiting retail sales to intended purposes, particularly addressing flavored, youth-oriented products marketed for inhalation. SB 936 also does not create new possession crimes or further criminalize Californians who consume nitrous, it simply reduces access for non-legitimate uses. The bill builds on actions already taken in Nebraska, Louisiana, and several California counties, including Humboldt, Orange, San Mateo, and Santa Cruz, to curb the retail sale of nitrous oxide."

Arguments in Support

The *Rural County Representatives of California*, the *National Stewardship Action Council*, the *California Product Stewardship Council*, *Republic Services*, *RethinkWaste*, *Recology*, *Californians Against Waste*, the *Resource Recovery Coalition of California*, *Western Placer Waste Management Authority*, *Tehama County Solid Waste Management Agency*, *Del Norte Solid Waste Management Authority*, the *Sanitation Districts of Los Angeles County*, *Solid Waste Association of North America California Chapters*, *StopWaste*, and *Zero Waste Marin* write jointly in support of this bill in a coalition letter. The coalition writes: "Senate Bill 936 bans the sale of nitrous oxide, which is widely used as an illicit recreational inhalant. Aside from serious and sobering public health and safety impacts associated with its illicit use as a party drug, large nitrous oxide cylinders are a growing and expensive waste management problem. ... Local governments and the solid waste industry have no control over what products are introduced into the marketplace and for which we will ultimately be responsible for management and disposal. By banning the sale of large nitrous oxide containers, SB 936 will significantly reduce cost pressures and management challenges for local solid waste programs and their operators."

Arguments in Opposition

The *American Civil Liberties Union California Action* (ACLU) writes in opposition to this bill: "SB 936 raises concerns as it extends criminal liability to individuals, including those with no relation to a retailer, for the wrongs committed by a business." ACLU opposes this bill unless amended "to directly regulate businesses. For example, California's approach to regulating flavored tobacco products imposes civil fines and retail license consequences for businesses that fail to comply with the regulatory framework. The proper avenue for the intent of SB 936 is direct regulation of retailers, not criminalization of individuals. For these reasons, ACLU California Action respectfully opposes SB 936, unless it is amended to directly regulate businesses instead of criminalizing individuals."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, the California Department of Tax and Fee Administration (CDTFA) estimates costs of \$258,000 in 2026-27 and \$288,000 in 2027-28 and ongoing for administration related to license or permit suspensions, performing inspections to ensure compliance with the court-ordered suspension provisions, issuing civil or criminal citations for violations of the suspension provisions, seizing cigarettes and tobacco products for violations of the suspension provisions, and revoking the suspended license for violations during suspension; cost pressures of an unknown amount to the courts to adjudicate any additional filings, with actual costs depending on the number of cases filed and the amount of court time needed to resolve each case; no costs to the Department of Justice.

VOTES**SENATE FLOOR: 33-0-7**

YES: Archuleta, Arreguín, Ashby, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASM BUSINESS AND PROFESSIONS: 17-0-2

YES: Berman, Addis, Ahrens, Alanis, Bauer-Kahan, Caloza, Elhawary, Ellis, Haney, Hart, Irwin, Jackson, Dixon, Lowenthal, Macedo, Nguyen, Pellerin

ABS, ABST OR NV: Bains, Chen

ASM PUBLIC SAFETY: 9-0-0

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

ASM APPROPRIATIONS: 15-0-0

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

UPDATED

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