
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1120 **Hearing Date:** July 11, 2017
Author: Cooper
Version: July 3, 2017
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Controlled Substances: Butane*

HISTORY

Source: California Professional Firefighters

Prior Legislation: AB 772 (Baker) Not heard in policy committee 2016
SB 212 (Mendoza) Ch. 141, Stats. of 2015
AB 849 (Bonilla) Vetoed 2015
SB 276 (Vasconcellos) Ch. 369, Stats. of 2003

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotic Officers Association; California Police Chiefs Association; California State Association of Counties; California State Sheriffs' Association; City of Anderson; City of San Marcos; Consortium management Group; League of California Cities; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association; Rural County Representatives of California

Opposition: American Civil Liberties Union of California (unless amended); California Retailers Association (unless amended); Consumer Specialty Products Association (unless amended); Lighter Association; Western Carwash Association

Assembly Floor Vote: 66 - 1

PURPOSE

The purposes of this bill are to restrict the sale of butane products, as specified, and to create a butane sales database housed in and operated by the Department of Justice (DOJ).

Existing law requires any person or entity that sells, transfers, or otherwise furnishes specified substances, including pseudoephedrine, to a person or entity to submit a report to DOJ for each transaction. The report must include the identification information about the purchaser. (Health & Saf. Code, § 11100, subd. (a).)

Existing law requires any person or entity that sells or transfers one of specified substances, including pseudoephedrine, to any person or business entity to obtain the purchaser's proper identification, as specified, and a letter of authorization from the purchaser which includes the purchaser's business license number or Drug Enforcement Agency (DEA) registration number, the address of the business, and a full description of how the substance is to be used. The information must be retained "in a readily available manner" for three years. (Health & Saf. Code, § 11100, subd. (c)(1)(A).)

Existing law requires any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes specified substances to a person or business entity to, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the specified identification information, to DOJ. (Health & Saf. Code, § 11100, subd. (d).)

Existing law provides that any person required to submit a report to DOJ who fails to submit a report or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding \$5,000, or by both the fine and imprisonment. A subsequent violation is punishable by a prison term of 16 months, two years or three years, or by a county jail term of up to one year, a fine of up to \$100,000, or both such fine and imprisonment. (Health & Saf. Code, § 11100, subd. (f).)

Existing law provides that it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish specified substances to a person under 18 years of age. Existing law further provides that it is unlawful for any person under 18 years of age to possess any of those specified substances. (Health & Saf. Code, § 11100, subds. (g)(1) & (g)(2).)

Existing law provides that it is unlawful for a retailer to sell in a single transaction more than three packages, or nine grams, of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine. This offense is a misdemeanor, punishable by a county jail term of up to six months, a fine of up to \$1,000, or both. (Health & Saf. Code, § 11100, subd. (g)(3).)

Existing law requires DOJ to provide a common reporting form for specified substances subject to a reporting requirement. The reporting form is required to include at least the following information:

- a) Name of the substance.
- b) Quantity of the substance sold, transferred, or furnished.
- c) The date the substance was sold, transferred, or furnished.
- d) The name and address of the person buying or receiving such substance.
- e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing such substance. (Health & Saf. Code, § 11101.)

Existing law provides that any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes specified substances with knowledge or the intent that the recipient will use the substance to unlawfully manufacture a controlled substance is guilty of a felony. (Health & Saf. Code, § 11104, subd. (a).)

Existing law provides that any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or specified chemical substances, with knowledge that the recipient will use the goods or chemical substance to unlawfully manufacture a controlled substance, is guilty of a misdemeanor. (Health & Saf. Code, § 11104, subd. (b).)

Existing law requires any manufacturer, wholesaler, retailer, or other person or entity that sells to any person or entity any laboratory glassware or apparatus, any chemical reagents or solvents, or any combination thereof, where the value of the goods exceeds \$100, to prepare a bill of sale with specified information, including the proper purchaser identification information. The bill of sale is required to be retained for five years, as specified. The bill of sale must be presented to law enforcement or any authorized representative of the Attorney General upon request. A violation of these provisions is a misdemeanor. (Health & Saf. Code, § 11107.)

Existing law requires any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, palladium black, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride to do the following:

- a) In any face-to-face or will-call sale, the seller is required to prepare a bill of sale which identifies the date of sale, cost of sale, method of payment, the specific items and quantities purchased and the proper purchaser identification information. The seller is required to sign the bill of sale. (Health & Saf. Code, § 11107.1, subd. (a)(1)(A).)
- b) Requires the seller to retain the original bill of sale containing the purchaser identification information for five years, and present the bill of sale upon demand by any law enforcement officer; and (Health & Saf. Code, § 11107.1, subd. (a)(1)(C).)
- c) Specifies that “proper purchaser identification” includes a valid driver’s license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the address of the purchaser, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the signature of the purchaser, and other specified information. (Health & Saf. Code, § 11107.1, subd. (a)(1)(B).)

Existing law requires the seller to maintain the following sales information for all sales other than face-to-face or will-call sales: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information. The seller is required to maintain this information for five years. (Health & Saf. Code, § 11107.1, subd. (a)(2)(A).)

Existing law specifies that “valid identifying information” includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Public Health; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Department of Justice; driver’s license; or other identification issued by a state.

(Health & Saf. Code, § 11107.1, subd. (a)(2)(B).)

Existing law requires the seller, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner. (Health & Saf. Code, § 11107.1, subd. (a)(2)(C).)

Existing law requires, if a common carrier is used, the seller to maintain a manifest regarding the delivery in a readily presentable manner for five years. (Health & Saf. Code, § 11107.1, subd. (a)(2)(D).)

Existing law requires any manufacturer, wholesaler, retailer, or other person or entity that purchases specified chemical substances to do the following:

- a) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased; and
- b) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General. (Health & Saf. Code, § 11107.1, subs. (b)(1) & (b)(2).)

Existing law provides that a first violation for failing to record and maintain the required information is a misdemeanor. A subsequent conviction shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$100,000, or both the fine and imprisonment. (Health & Saf. Code, § 11107.1, subs. (c)(1) & (c)(2).)

Existing law provides that every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, specified controlled substance, including marijuana, shall be punished by imprisonment for three, five, or seven years and by a fine not exceeding \$50,000. (Health & Saf. Code, § 11379.6, subd. (a).)

Existing law provides that the fact that a person under 16 years of age resided in a structure in which a violation of this section involving methamphetamine occurred shall be considered a factor in aggravation by the sentencing court. (Health & Saf. Code, § 11379.6, subd. (b).)

Existing law provides that the fact that a violation of this section involving methamphetamine occurred within 200 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court. (Health & Saf. Code, § 11379.6, subd. (c).)

Existing law specifies that any person who has under his or her management or control any building, room, space, or enclosure, who knowingly rents, leases, or makes available for use, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or for imprisonment for 16 months, two years or

three years in the county jail. (Health & Saf. Code, § 11366.5, subd. (a).)

Existing law provides, subject to other provisions of law, that it is lawful under state and local law for persons 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products. (Health & Saf. Code, § 11362.1, subd. (a)(1).)

Existing law provides that it is unlawful to manufacture concentrated cannabis using a volatile solvent unless done in accordance with a specified license. This is punishable by imprisonment for three, five, or seven years. (Health & Saf. Code, §§ 11362.3, subd. (a)(6) & 11362.4, subd. (d))

Existing federal law provides very detailed restrictions and requirements for the retail sale of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine. These restrictions include, in part, restrictions on the amount of that may be purchased per transaction, restrictions on the amount of that may be purchased in a 30-day period, record keeping requirements for the seller, and identification requirements for the purchaser. Existing federal law provides penalties for violations of the purchase limits, distribution limits, and recording requirements. (21 U.S.C. §§ 830(e), 841(c), & 844(a).)

This bill provides that it is unlawful for a manufacturer, wholesaler, reseller, retailer, or other person or entity to sell to any one customer more than 600 milliliters of nonodorized butane in any 30-day period.

This bill provides that it is unlawful for manufacturers, wholesalers, resellers, retailers, or other persons or entities to knowingly or negligently sell to any one customer a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from all sellers in any 30-day period. This subdivision is not enforceable until the butane sales database system is operational, as determined by DOJ.

This bill provides that the reasonable reliance on information contained in the butane sales database is an affirmative defense to the crime of knowingly or negligently selling to any one customer a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from all sellers in any 30-day period.

This bill provides that the following transactions are exempt from the limitations on the quantity of nonodorized butane that can be purchased in a 30-day calendar period:

- a) Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale.
- b) Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed under the Business and Professions Code or a medical cannabis collective or cooperative described in Health and Safety Code section 11362.7, subdivision (b), operating in compliance with all applicable state licensing requirements and local regulations governing that type of business.
- c) The sale of lighters, torch lighters, or other appliances that contain or use nonodorized butane for fuel and contain less than 250 milliliters of nonodorized butane.

This bill provides that for every sale of nonodorized butane that is not exempted, the seller is required to record and maintain on its premises for two years after the date of the sale, the following information:

- a) The name, address, and date of birth of the customer, as obtained from his or her valid driver's license or other government-issued photo identification;
- b) The date and time of the sale;
- c) The brand and quantity of butane purchased; and,
- d) The full name of the person who processed the sale.

This bill provides that a violation of any provision is a misdemeanor.

This bill requires DOJ, contingent upon the availability of adequate funds and in collaboration with stakeholders representing the sellers of nonodorized butane who are required to report and collect information pursuant to this section, to develop and maintain an electronic database system for the electronic monitoring of and Internet access to information regarding the amount of butane purchased by individual customers. The database system will allow retailers to automatically synchronize purchases and provide real time alerts of any purchases in violation of the restrictions on butane purchases.

This bill provides that the database system is required to be developed in one of the following three ways:

- a) The database system may be based upon the expansion of an existing electronic database.
- b) The database system may be an existing product, which is available for use by retail sellers of nonodorized butane to customers, as determined by DOJ.
- c) The database system may be a newly created product.

This bill requires DOJ to post a notification on its Internet Web site when the butane sales database is operational.

This bill requires all manufacturers, wholesalers, resellers, retailers, or other persons or entities selling nonodorized butane to customers to keep hard copy records of nonodorized butane sales.

This bill requires any manufacturer, wholesaler, reseller, retailer, or other person or entity that sells nonodorized butane and is not exempted from the restrictions on butane sales to electronically submit a quarterly report of all sales involving nonodorized butane, including all of the information required to be collected, to the DOJ upon request.

This bill provides the following definitions:

- a) "Customer" means any person or entity that purchases or acquires nonodorized butane from a seller during a transaction other than manufacturers, wholesalers, resellers, or retailers that are purchasing butane solely for the purpose of resale, or persons or entities buying butane for use in a lawful commercial cannabis enterprise as described above.
- b) "Nonodorized butane" means iso-butane, n-butane, -butane, or a mixture of butane and propane of any power that may also use the words "refined," "pure," "purified,"

“premium,” or “filtered,” to describe the-butane or butane mixture, which does not contain ethyl mercaptan or a similar odorant.

- c) “Sell” or “sale” means to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration.
- d) “Seller” means any person, business entity, or employee thereof that sells nonodorized butane to any customer within this state.

COMMENTS

1. Need for This Bill

According to the author:

Public safety personnel, including firefighters, face an injury risk that is unique, and uniquely dangerous. Even when training, their hazards and physical demands are greater than most any other employee’s day-to-day job. One such hazard is the increase in the criminal production of butane honey oil (BHO).

According to the U.S. Fire Administration, home-grown labs that separate and extract hash oil from marijuana are a dangerous and growing trend, particularly on the West Coast and in states where marijuana is legal or decriminalized. Fires and explosions in these illicit death traps blow out windows, eviscerate buildings and create a risk to life and limb comparable to (and in some cases exceeding) those created by methamphetamine labs. For example, In April 2015, the California Alliance of Drug-Endangered Children reported that 41 marijuana lab deaths had occurred in California between 2011 and April 2015. Among those deaths were three children. Other fire and life safety examples of why AB 1120 is needed include:

- December, 2016, two Los Angeles-area men are critically injured after a portion of their home suspected of being used as a honey oil lab explodes.
- May 2015, a Nevada City, CA man is thought to have caused an explosion in his home’s kitchen, which injured his baby and fiancée. Investigators suspect that honey oil production caused the blast.
- April 2015, a 33-year-old Redding, CA man dies after honey oil production caused an explosion inside a detached garage adjacent to the main residence. The man was one of five who suffered burn injuries as a result of the explosion, which almost completely destroyed the garage.
- January 2013, three people suffer life-threatening burns after being injured in a San Diego, CA hotel room explosion where butane was ignited by a man in the room who lit a cigarette.

Additionally, BHO lab explosions can lead to secondary explosions and fires which put even more innocent lives at risk. Additionally, public safety personnel are exposed to high levels of toxic carcinogens. The off gassing and smoke venting from a BHO lab explosion is highly toxic. The cumulative effect of exposure to these types of toxins can be devastating, leading to deadly and debilitating diseases such as cancer, heart and lung disease.

The many risks to life and limb from these labs can be largely traced to the presence of large quantities of butane on these premises. Since, by their nature, these labs operate out of the view of fire and safety codes, it's important and appropriate to take steps to keep these underground operations from putting our responders, and innocent victims, at risk.

Every time firefighters enter a structure fire, they are confronted with a haze of toxins and compounds released by smoldering products. When burned, butane and other combustible materials used in the extraction of honey oil can contribute to the already high rates of certain cancer among firefighters. Toxic gasses seep into a firefighter's protective clothing and sometimes penetrate their breathing apparatus. During overhaul and mop-up operations, toxins are still being produced and firefighters are at risk of directly inhaling them. And, when a firefighter returns to the station after responding to a BHO lab explosion, the toxins may be on their protective equipment, adding another toxic exposure pathway for the men and women back at the firehouse.

These illegal labs do not care about rules or regulations when they are working with butane. The labs are set up recklessly, the gas leaks, fills a confined space and when it is exposed to an open flame or electrical spark it explodes, violently. Many of the victims from these explosions are totally unaware of the dangers surrounding them. In April 2015, the California Alliance of Drug-Endangered Children reported that 41 marijuana lab deaths had occurred in California between 2011 and April 2015. Among those deaths were three children.

AB 1120 will require that when butane is sold the retailer must record and keep limited information on the purchase. This information will help law enforcement track unusual purchases of butane and help them weed out illegal manufacturers of honey oil. This type of "point of sale" regulation works. It has been very effective in the detection and dismantling of methamphetamine

2. Butane and Its Commercial Uses

Butane is a hydrocarbon and a highly flammable, colorless, odorless, easily liquefied gas. It is commonly used as fuel for cigarette lighters and portable stoves, a propellant in aerosols, a heating fuel, a refrigerant, and in the manufacture of a wide range of products. When blended with propane and other hydrocarbons, it may be referred to commercially as liquefied petroleum gas (LPG).

3. Uses of Butane in Cannabis-Related Operations

Butane honey oil (BHO) is the end product of the process of using butane to extract THC and other cannabinoids from marijuana leaves and flowers. The process typically involves placing raw plant material into a tube, usually glass, stainless steel or PVC. The tube is open at one end and has some type of filter at the other. A solvent, typically liquid butane, is then shot through the top of the tube and quickly dissolves the cannabinoids in marijuana. A solution of cannabinoids, waxes, and oil dissolved in butane comes out of the other end. The butane is then

removed from the butane/cannabis wax solution via evaporation. The remaining BHO has a texture that varies from glass-like to oily. The substance, usually golden amber, hardens into a thin layer that can be broken into pieces smaller than a pea, heated and consumed using a specially designed bong. Post extraction treatments include washing with alcohol, whipping, and other steps to remove the butane smell, remove the plant waxes, and alter the appearance. (See <https://www.theweedblog.com/what-is-marijuana-butane-hash-oil-bho-and-is-it-safe/> ; http://www.oregonlive.com/marijuana/index.ssf/2014/05/butane_hash_oil_glossary_of_te.html [as of Jul. 4, 2017].) A website providing instructions on how to manufacture BHO recommends using 10 ounces of butane per one ounce of marijuana. (<http://www.ilovegrowingmarijuana.com/making-marijuana-bho-safely/> [as of Jul. 4, 2017].)

Butane can also be used to power carbon dioxide generators that help indoor marijuana plants grow, and some growers rely on tanks of butane gas or propane to avoid using large amounts of metered gas that could draw attention to the utility company. (<http://www.latimes.com/nation/nationnow/la-na-pot-labs-20161001-snap-story.html>) [as of Jul. 5, 2017].)

4. Incidents of Marijuana Lab Explosions

There have been a number of marijuana lab explosions across the country in recent years. (<http://www.latimes.com/nation/nationnow/la-na-pot-labs-20161001-snap-story.html>) [as of Jul. 5, 2017].) These explosions have caused injuries, deaths, and serious damage to homes, apartments, motels, and other structures. (<http://abc7.com/news/man-severely-burned-in-drug-lab-explosion-in-pasadena/1831735/>; <http://www.foxla.com/news/local-news/215288932-story>; <http://www.ocregister.com/2017/06/08/this-marijuana-regulation-could-prevent-explosions/>; <http://www.theunion.com/news/local-news/man-burned-in-suspected-butane-honey-oil-lab-explosion-sent-to-hospital-authorities-say/#>) [as of Jul. 5, 2017].) Following a BHO lab explosion in April 2017, a detective with the L.A. IMPACT drug task force reported that “a third of the labs we go to of this type have already blown up.” (<http://ktla.com/2017/06/18/2-suspects-injured-during-marijuana-honey-oil-lab-explosion-in-south-el-monte/>) [as of Jul. 5, 2017].)

5. Concentrated Cannabis and Proposition 64

California voters approved Proposition 64, the Adult Use of Marijuana Act, in November 2016. After the passage of Proposition 64, it is now legal for an individual over 21 years of age to possess less than 4 grams of concentrated cannabis, which includes BHO. However, it is still illegal for individuals to manufacture BHO without a license. If manufacturing BHO without a license, an individual could be sentenced to three, five, or seven years of imprisonment upon conviction.

6. The National Precursor Log Exchange

The National Precursor Log Exchange (NPLEx™) is a real-time electronic logging system used by pharmacies and law enforcement to track sales of over-the-counter (OTC) cold and allergy medications containing precursors to methamphetamine. The majority of states now require real-time electronic monitoring of precursor purchases through this national database to comply with

federal pseudoephedrine tracking laws. Because there are no federal laws regulating the sale of butane, no federal database tracking butane sales exists.

7. Regulation of Butane Sales

Currently, several counties and municipalities in California regulate the sale of butane. No other states have a statewide butane sales database. The following chart includes information regarding restrictions on butane sales as well as recording requirements for transactions by jurisdiction.

County	Sale	Recording
Butte	No more than 600ml per 30 day period and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Shasta	No more than 600ml per calendar month day period and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Cities		
Anderson	No more than “two” canisters per calendar month and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Biggs	No more than 600ml per 30 day period and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Eureka	No more than 600ml per calendar month day period and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Chico	No more than 600ml per 30 day period and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Los Angeles	No more than 1200 ml per 30 day period.	Requires the recording of the purchaser’s date, quantity, and identification for two years.
Willows	No more than 600ml per calendar month and in possession.	Requires the recording of the purchaser’s date, quantity, and identification for two years.

8. What This Bill Does

This bill limits the amount of butane that can be sold to any one customer in a 30-day period to 600 milliliters. The bill specifies that it is unlawful for manufacturers, wholesalers, resellers, retailers, or other persons or entities to *knowingly or negligently sell to any one customer* a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased *from all sellers* in any 30-day period. This bill specifies the types of transactions that are exempt from these restrictions. The exemptions generally cover business-to-business transactions, licensed commercial cannabis operations, and the sale of lighters, butane torches, and other containers that contain less than 250 milliliters of butane.

This bill requires sellers of butane not exempted from the sales restrictions to record all butane sales transactions. The record is required to include specified information, including purchaser information, the brand and quantity of the butane purchased, the name of the employee who

processed the sale, and the date and time of the sale. Sales records must be kept for two years. Sellers are required to keep a hard copy of the sale records, and to submit an electronic report to DOJ upon request.

This bill also requires DOJ, contingent upon funding, to develop and maintain an electronic database that would aid the entities subject to the butane sales restrictions and recording requirements. DOJ would have to collaborate with relevant stakeholders in designing the database. The database would be designed to provide information and alerts in real time to those accessing it. The provision pertaining to liability associated with “knowingly or negligently selling to any one customer a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from all sellers in any 30-day period” is not enforceable until the DOJ database is operational. DOJ is required to post a notice on its website when the database is operational. Notably, the provision that makes it unlawful to sell to any one customer more than 600 milliliters of nonodorized butane in any 30-day period would be enforceable prior to the DOJ database being operational.

A violation of any of the provisions in this newly created Penal Code section is a misdemeanor.

This bill does not address the regulation of Internet sales of butane. It is unclear how the provisions of this bill, including the limit on sales and the recording and reporting requirements would apply to such a retailer, if at all.

Although sellers of butane do not have to comply with the provision making it unlawful to “knowingly or negligently selling to any one customer a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from **all sellers** in any 30-day period” until the DOJ database is operational, sellers would have to comply with the provision prohibiting the sale of more than 600 milliliters of butane to any one customer in any 30-day period prior to the database being operational. It is unclear if all sellers of butane would be able to track sales across all of its locations in order to comply with this provision. For example, while a larger retailer may already have systems in place to comply with the sales restriction, it is unclear if a smaller chain with retail outlets would be able to track butane sales across all of its stores, prior to the operation of the DOJ database, such that the company would be in compliance.

9. Related Legislation

AB 238 (Steinhorth) would prohibit a Manufacturing Level 2 licensee from manufacturing non-medical marijuana products using volatile solvents on property zoned for residential or mixed use. AB 238 passed out of the Senate Business, Professions, and Economic Development Committee. It is eligible for a floor vote.

10. Argument in Support

According to the California Professional Firefighters, the bill’s sponsor:

BHO or ‘honey oil’, is a cannabis product produced by filling a cylindrical glass or stainless steel canister with marijuana and then flooding the canister with a solvent -- usually butane. The butane strips the plant matter of its cannabinoid-

containing oils, resulting in a mixture of psychotropic plant oil and chemicals that must then be purified in order to remove traces of the butane. Butane is necessary for the production of BHO. It can be purchased over-the-counter in 8-ounce cans and while the extraction process typically uses one whole can, it's likely that dozens or even hundreds of cans of butane are on site where BHO is being produced, thereby significantly increasing fire and life safety risks.

Butane canisters are pressurized and contain compressed, highly flammable gas. Ultimately, butane canisters that are compromised due to high heat and still pressurized pose a serious explosive threat. In addition to being highly explosive, butane is colorless, odorless and heavier than air. It can travel along the floor until encountering an ignition source.

According to the US Fire Administration, separating hash oil from marijuana is an illicit extraction that appears to be a growing and dangerous trend in the United States -- particularly more common on the west coast where reported fires and explosions have blown out windows, walls and caused numerous burn injuries and even deaths. For example, In April 2015, the California Alliance of Drug-Endangered Children reported that 41 marijuana lab deaths had occurred in California between 2011 and April 2015. Among those deaths were three children.

Initial BHO lab explosions can lead to secondary explosions and fires and, in states with legalized use and availability of marijuana, such as California, these incidents appear to be increasing. Secondary hazards associated with such explosions include exposing firefighters to toxic carcinogens at high levels due to the materials involved. The off gassing and smoke venting from a BHO lab explosion is highly toxic. Every time firefighters enter a structure fire, they are confronted with a haze of toxins and compounds released by smoldering products. When burned, butane and other combustible materials used in the extraction of honey oil can contribute to the already high rates of certain cancer among firefighters.

Toxic gasses seep into a firefighter's protective clothing and sometimes penetrate their breathing apparatus. During overhaul and mop-up operations, toxins are still being produced and firefighters are at risk of directly inhaling them. And, when a firefighter returns to the station after responding to a BHO lab explosion, the toxins may be on their protective equipment, adding another toxic exposure pathway for the men and women back at the firehouse. The cumulative effect of toxic exposures over the course of a career can be devastating: Not only cancer, but heart, lung and other debilitating diseases can be traced to prolonged exposure to toxins like those found in hazardous chemicals.

11. Argument in Opposition

The California Retailers Association writes:

While sales tracking in general appears to be effective in limiting consumer access to excessive and potentially dangerous amounts of butane, AB 1120 does not allow for an electronic repository for such information, thus allowing individuals to keep purchasing more butane from store to store, undermining the intent of this legislation...Furthermore, very private customer information would have to be manually logged and maintained increasing administrative burden to comply with AB 1120.

An ideal approach to sales regulation is one that is partnered with an electronic tracking system in order to ensure the law's effectiveness. We have seen this accomplished with pseudoephedrine and more recently, ammo sales for California. As a practical matter, CRA strongly recommends to the author inclusion of an electronic tracking system...Electronic tracking would offer real time information regarding purchases and can be an effective tool for retailers to identify customers who have exceeded purchase limits, thereby preventing illegal sales.

CRA shares the author's concerns about the misuse of butane in illegal productions of honey/hash oil. Unregulated amounts of butane have caused dangerous explosions, elevating the need to address such activity. However, the proposed method of regulating such products, which have many legal uses, presents various challenges with implementation.

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