
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 3112 **Hearing Date:** June 12, 2018
Author: Grayson
Version: February 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Controlled Substances: Butane*

HISTORY

Source: Lighter Association

Prior Legislation: AB 1120 (Cooper), vetoed in 2017
AB 1244 (Voepel), not heard in Assembly Privacy 2017-2018 legislative session
AB 772 (Baker), not heard in Assembly Public Safety 2015-2016 legislative session
AB 849 (Bonilla), vetoed 2015
SB 212 (Mendoza), Ch. 141, Stats. of 2015
SB 276 (Vasconcellos), Ch. 369, Stats. of 2003

Support: California Cannabis Industry Association; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotics Officers Association; California Police Chiefs Association; California Professional Firefighters; California Retailers Association; CMG/Caliva; Los Angeles County Professional Peace Officers Association; Rural County Representatives of California

Opposition: None known

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to make it unlawful for a manufacturer, wholesaler, reseller, or retailer to sell non-odorized butane to a customer, except as specified, and to authorize a civil penalty to be assessed for the violations specified.

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 the Department of Justice (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)(1).)

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, subs. (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 DEA; 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 customer any quantity of nonodorized butane, except as otherwise provided.

This bill provides that the prohibition on the sale of butane does not apply to any of the following transactions:

- Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale.
- Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed as specified, or a medical cannabis collective or cooperative, operating in compliance with all applicable state licensing requirements and local regulations governing that type of business.
- The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges, or other products that contain or use nonodorized butane and contain less than 150 milliliters of butane.
- The sale of any product in which butane is used as an aerosol propellant.

This bill provides that any person or business that violates the prohibition on the sale of butane is subject to a civil penalty of \$2,500.

This bill provides that the Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

This bill provides that the civil penalty be deposited into the General Fund if the action is brought by the Attorney General, to the treasurer of the city in which the judgment is entered if the action is brought by a city attorney, or to the treasurer of the county in which the judgment is entered if the action is brought by a county counsel.

This bill defines customer as any person or entity that purchases or acquires nonodorized butane from a seller during a transaction, except as specified.

This bill defines nonodorized butane as 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.

This bill defines sell or sale as to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration.

This bill defines seller as 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:

According to the U.S. Fire Administration, home-grown labs that use butane to 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. . . .

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. . . .

. . .

Last year, this committee heard AB 1120 by our colleague Assemblyman Cooper. That bill required an odorant to butane canisters over 150 milliliters and also required that retailers provide recordkeeping of all butane sales and the creation of a statewide data tracking system for butane sales. Governor Brown’s veto included his concern over the costs associated with the data tracking system and that the bill needs to be more narrowly tailored. This legislation addresses these concerns by removing the state wide data tracking system and the retailer’s record keeping requirement. However, this bill continues to require the biggest deterrent to the illegal use of butane, the adding of an odorant to butane canisters over 150 milliliters. The addition of an odorant will be a disincentive to people who want to use butane canisters for criminal activity of making marijuana honey oil. Finally, this legislation continues the protections that were contained in AB 1120 by providing exemptions for business to business sale and the use of butane already contained in consumer products like lighters, utility lighters, and camping appliances, among other products.

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 Jun. 4, 2018].) 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 Jun. 4, 2018].)

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 Jun. 4, 2018].) 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 Jun. 4, 2018].) 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 Jun. 4, 2018].)

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. What This Bill Does

This bill allows the sale of non-odorized butane for legal commercial activity for the following transactions:

- Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;
- Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed as specified, or a medical cannabis collective or cooperative, operating in compliance with all applicable state licensing requirements and local regulations governing that type of business; and,
- The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges, or other products that contain or use non-odorized butane and contain less than 150 milliliters of butane; and
- The sale of any product in which butane is used as an aerosol propellant.

7. Governor's Veto of AB 1120

AB 1120 (Cooper) would have required a person or business to record specified information about the sale of non-odorized butane, including the identity of the customer, and to maintain that information for 2 years. AB 1120 would have required, subject to available funds, that the DOJ create a database of butane sales. After the database was operational, it would have made it unlawful to sell to any one customer more than 600 milliliters of non-odorized butane in a 30-day period or to sell any quantity of non-odorized butane to a customer that would cause the customer to exceed 600 milliliters of non-odorized butane purchased from all sellers in a 30-day period.

In his veto message, Governor Brown wrote:

“I empathize with the author’s intent to address the tragic explosions that can occur at illegal butane hash-oil production sites. Unfortunately, I believe this bill takes a very expansive approach that may not ultimately solve the problem. The Department of Public Health is currently working on regulations that will be finalized at the end of this year that move this type of production out of the shadows and into a safe and regulated environment. I believe any additional legislation aimed at curbing illegal butane use should be more narrowly tailored, and not place a uniform limit on an industry that has many other legitimate uses.”

8. Argument in Support

According to the Lighter Association:

AB 3112, narrows the scope of AB 1120 (Cooper) of last year that was requested by Governor Brown in his veto message of that bill.

Specifically, AB 3112 will require the sale of butane refillable canisters of 150 milliliters to contain an odorant while providing exemptions for business to business sales and for consumer products that are already sold with internal butane fuel including, lighters, torchers, appliances, etc. In addition, the Governor's veto message also raised the expensive nature of AB 1120. AB 3112 eliminates most of the costs associated with AB 1120 by removing the record keeping and reporting requirements for retail establishments and eliminating the establishment of a statewide data base for all butane sales. This change also addresses and resolves the concerns of collecting and personal information of consumers by the retailers.

AB 3112 will help reduce the illegal use of butane while still preserving the lawful sale for use in consumer products.

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