
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 491 **Hearing Date:** April 27, 2021
Author: Nielsen
Version: April 5, 2021
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Cigarette and Tobacco Products Licensing Act of 2003*

HISTORY

Source: Los Angeles County Sheriff's Department

Prior Legislation: SB 193 (Nielsen), held in Assembly Appropriations 2019
SB 631 (Nielsen), not set for hearing Assembly Judiciary 2017
AB 1735 (Hall), Ch. 458, Stats. 2014
AB 1015 (Torlakson), Ch. 266, Stats. 2009
AB 71 (Horton) Ch. 890, Stats. 2003

Support: Milestone Ranch Malibu; West Shield Adolescent Services; 30 individuals

Opposition: None known

PURPOSE

The purpose of this bill is to require a court to order the suspension, for up to one year, of the business license of a person who has knowingly violated laws related to the distribution of nitrous oxide and who has a prior conviction for such an offense, except as specified.

Existing law makes it a misdemeanor to sell, furnish, administer, distribute, give away, or offer 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. Requires the court to order the suspension of the business license, for a period of up to one year, of a person who knowingly violates this section after having been previously convicted of a violation of this section, unless the owner of the business license can demonstrate a good faith attempt to prevent illegal sales or deliveries by the owner's employees. (Pen. Code, § 381c.)

Existing law makes it a misdemeanor to dispense or distribute nitrous oxide to a person if the dispenser or distributor of the nitrous oxide knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to himself, herself, or another person. (Pen. Code, § 381d.)

Existing law requires that a person who dispenses or distributes nitrous oxide record each transaction in a written or electronic document. Provides that a violation is a misdemeanor. (Pen. Code, § 381e.)

Existing law provides that the Department of Tax and Fee Administration (CDTFA) issue a license to a cigarette or tobacco retailer upon receipt of a completed application and payment of specified fees. Provides various exceptions, including when the retailer or person controlling the retailer has been convicted of specified violations of the tax code. (Bus. & Prof. Code, § 22973.1.)

Existing law provides that licenses issued pursuant to the Cigarette and Tobacco Products Licensing Act of 2003 are subject to suspension or revocation for violations of the Act or the Revenue and Taxation Code, as provided. Delineates the process for suspending or revoking a license. Specifies that a “violation” means a violation of the Revenue and Tax Code relating to cigarettes and tobacco products. (Bus. & Prof. Code, § 22980.)

This bill adds to the list of exceptions from the general requirement that the CDTFA issue a license to a cigarette or tobacco retailer that the retailer has been convicted of one of the following offenses: selling, furnishing, administering, distributing, or giving away nitrous oxide to a minor; dispensing or distributing nitrous oxide to a person if the dispenser or distributor of the nitrous oxide knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to himself, herself, or another person; or violating record keeping requirements involving the dispensing and distribution of nitrous oxide. Adds these offenses to the definition of “violation” for purposes of violations that can result in the suspension or revocation of a license by the CDTFA.

This bill requires the CDTFA to provide a licensee with at least 10 days’ written notice of a pending suspension or revocation pursuant to this section and an opportunity to appeal the suspension or revocation only to correct a mistake or clerical error.

This bill prohibits the CDTFA from accepting or considering an appeal of suspension or revocation if the appeal is founded upon the grounds of whether the retailer, or any employee or agent of the retailer, violated the above listed offenses related to nitrous oxide. Authorizes the CDTFA to modify its action on its own to correct a mistake or clerical error.

This bill requires in the case of a person who dispenses or distributes nitrous oxide to a person, and knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to that person or another person, the court to order the suspension, for up to one year, of the business license of a person who has previously been convicted of this offense. Provides that suspension of the business license does not apply if the owner of the business license provides evidence that the owner or the owner’s employees have made a good faith effort to prevent violations of this offense.

COMMENTS

1. Need for This Bill

According to the author:

Most Californians will encounter nitrous oxide at the dentist in the form of “laughing gas,” or as the aerosol spray propellant in pre-made whipped cream (e.g., *Reddi-Wip*).

The small pressurized cartridges are also sold with the intended use of aerating homemade whipped cream.

Strikingly, nitrous oxide cartridges are also sold in smoke shops or tobacco shops – stores that specialize in selling inhalants—for underground purposes of recreational intoxication. Well known as a party drug, nitrous oxide is dispensed from the canisters into a balloon from which it is inhaled yielding a short burst of euphoria.

Unlike the “laughing gas” administered by dentists, who carefully control and monitor its use to ensure that there is a safe amount of oxygen mixed in with the gas, nitrous oxide abuse is dangerous. According to the National Institute on Drug Abuse, recreational use of nitrous oxide can lead to “death from lack of oxygen to the brain, altered perception and motor coordination, loss of sensation, limb spasms, blackouts caused by blood pressure changes, [and] depression of heart muscle functioning.”

It is the intent of this bill to remove nitrous oxide canisters from smoke and tobacco shops being sold for recreational abuse and penalize business license holders who knowingly violate.

2. Tobacco Licensing

In 2003, the Cigarette and Tobacco Products Licensing Act required the Board of Equalization (BOE) to license manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products who are engaged in business in California. In 2017, the Legislature transferred duties, powers, and responsibilities related to the administration of taxes and fees from BOE to the California Department of Tax and Fee Administration (CDTFA).

Under the Act, retailers must have and maintain a license to sell cigarettes or tobacco products to purchasers. CDTFA must issue a license upon receipt of an application and the required fee, unless any of the following occur:

- CDTFA had previously issued the retailer a license that it subsequently revoked or suspended.
- The location on the application is the same as the location of a previously revoked license, or one currently subject to revocation proceedings, unless five years have passed from the date of revocation, or the applicant has acquired the location in an arm’s length transaction.
- The retailer has been convicted of felony counterfeiting or tobacco tax evasion with intent to defeat or evade the determination of an amount due.
- The retailer does not possess all required permits and licenses.

CDTFA may also suspend or revoke a retail tobacco license for violations of the Act and Business and Professions Code section 22980 delineates the process for doing so.

3. Nitrous Oxide

Nitrous oxide is a colorless and odorless to sweet-smelling inorganic gas. It has several uses, including managing pain and anxiety in dentistry, use in food preparation, and as an oxidizer in model rockets and motor vehicle racing. Nitrous oxide can be inhaled from balloons filled with

the gas. The NIDA notes that “although the high that inhalants produce usually lasts just a few minutes, people often try to make it last by continuing to inhale again and again over several hours.” (*Id.*) Short-term effects of inhalant use include slurred or distorted speech, lack of coordination, euphoria, dizziness, light-headedness, hallucinations, delusions, vomiting, headaches, and drowsiness. Long-term effects of inhalant use include liver and kidney damage, hearing loss, bone marrow damage, loss of coordination and limb spasms from nerve damage, delayed behavioral development, and brain damage from a lack of oxygen. Inhalant abuse can also cause seizures, coma, and death.

The National Survey on Drug Use and Health (NSDUH) provides data on substance use, including inhalant use. The 2018 survey found that approximately 2,000,000 people aged 12 or older—or 0.7 percent of the population—had used an inhalant in the past year, and inhalant use was more common among adolescents aged 12 to 17.

(<https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf>) The survey also found the following data regarding the percentages of people in different age groups who were past year users of inhalants: 2.7 percent of adolescents, 1.5 percent of young adults aged 18 to 25, and 0.4 percent of adults aged 26 or older. (*Id.*)

4. Effect of This Bill

Over the years, the Legislature has created several misdemeanors specifically related to nitrous oxide. Penal Code section 381b makes it a misdemeanor to possess nitrous oxide with the intent to become intoxicated and also makes it a misdemeanor to be under the influence of nitrous oxide. Penal Code section 381c makes it a misdemeanor to sell, furnish, distribute, furnish, give away nitrous oxide to a minor, and provides for the suspension of the business license of a person who has been previously convicted of this crime, unless the business license owner demonstrates good faith efforts to prevent sales of nitrous oxide to minors by the business license owner’s employees. Penal Code section 381d makes it a misdemeanor for any person to dispense or distribute nitrous oxide to a person, if it is known or should have been known that it 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. Finally, Penal Code section 381e requires a person distributing or dispensing nitrous oxide to record each transaction and provides that a violation is a misdemeanor.

This bill seeks to curb the continued unlawful sale of nitrous oxide as a drug. Specifically, this bill would permit CDTFA to deny an applications for a tobacco licenses from retailers who have been convicted of selling, furnishing, administering, distributing, or giving away nitrous oxide to a minor; dispensing or distributing nitrous oxide to a person if the dispenser or distributor of the nitrous oxide knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to himself, herself, or another person; or violating record keeping requirements involving the dispensing and distribution of nitrous oxide. This bill also expands the definition of “violation” for purposes of violations that can result in the suspension or revocation of a license by the CDTFA. Additionally, this bill requires in the case of a person who dispenses or distributes nitrous oxide to a person, and knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to that person or another person, the court to order the suspension, for up to one year, of the business license of a person who has previously been convicted of this offense. However, the

bill provides that suspension of the business license does not apply if the owner of the business license provides evidence that the owner or the owner's employees have made a good faith effort to prevent violations of this offense. The bill provides the same penalty in cases in which a person dispensed or distributed nitrous oxide and violated the record keeping statute. These provisions of the bill are consistent with the penalty and exception codified in Penal Code section 381c.

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