

ASSEMBLY BILL

No. 1015

Introduced by Assembly Member Torlakson

February 27, 2009

An act to add Section 381c to the Penal Code, relating to nitrous oxide.

LEGISLATIVE COUNSEL'S DIGEST

AB 1015, as introduced, Torlakson. Nitrous oxide: prohibit sale to minors.

Existing law makes it a misdemeanor for any person to possess nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or to knowingly and with the intent to do so be under the influence of nitrous oxide or any material containing nitrous oxide.

This bill would provide, in addition, that it is a misdemeanor, punishable as specified, to sell or give away a device containing nitrous oxide to a person under 18 years of age, as specified. The bill would require every retailer selling devices exclusively containing nitrous oxide to require specified purchasers to exhibit proper proof of age, as specified. A retailer convicted 2 or more times of any of the bill's provisions would be subject to a suspension of its business license, as specified. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 381c is added to the Penal Code, to read:

2 381c. (a) As used in this section, “nitrous oxide” refers to any
3 of the following substances: N₂O, dinitrogen monoxide, dinitrogen
4 oxide, nitrogen oxide, and laughing gas.

5 (b) Every person who sells, furnishes, administers, distributes,
6 gives away, or offers to sell, furnish, administer, distribute, or give
7 away a device, either exclusively containing nitrous oxide or
8 exclusively containing a chemical compound mixed with nitrous
9 oxide, to a person under 18 years of age is guilty of a misdemeanor.

10 (c) Every person who sells, furnishes, administers, distributes,
11 gives away, or offers to sell, furnish, administer, distribute, or give
12 away a device, either exclusively containing nitrous oxide or
13 exclusively containing a chemical compound mixed with nitrous
14 oxide, to a person under 18 years of age, for the purpose of causing
15 a condition of intoxication, euphoria, excitement, exhilaration,
16 stupefaction, or dulling of the senses or nervous system is guilty
17 of a misdemeanor and is punishable by a fine not exceeding two
18 thousand five hundred dollars (\$2,500), by imprisonment in the
19 county jail for not more than one year, or by both that fine and
20 imprisonment.

21 (d) Every person who possesses a device, either exclusively
22 containing nitrous oxide or exclusively containing a chemical
23 compound mixed with nitrous oxide, with the intent that the nitrous
24 oxide be sold, furnished, administered, distributed, or given away
25 to a person under 18 years of age is guilty of a misdemeanor and
26 is punishable by a fine not exceeding two thousand five hundred
27 dollars (\$2,500), by imprisonment in the county jail for not more
28 than one year, or by both that fine and imprisonment.

29 (e) (1) Every retailer, or employee of a retailer, selling devices
30 exclusively containing nitrous oxide shall require a person who is

1 purchasing a device exclusively containing nitrous oxide and whose
2 age is in question to exhibit proper proof of age.

3 (2) Any person who violates this subdivision is guilty of a
4 misdemeanor.

5 (3) For the purposes of this subdivision, “proper proof of age”
6 means a valid passport, Armed Forces identification card, or valid
7 motor vehicle operator’s license or identification card.

8 (f) On and after July 1, 2010, the court shall order the suspension
9 of the business license, for a period of one year, of a person who
10 knowingly violates any of the provisions of this section after having
11 been previously convicted of a violation of this section, unless the
12 owner of the business license can demonstrate a good faith attempt
13 to prevent illegal sales or deliveries by the owner’s employees.

14 (g) This section shall not apply to any person who administers
15 nitrous oxide for the purpose of providing medical or dental care,
16 if administered by a medical or dental practitioner licensed by this
17 state, or at the direction or under the supervision of a practitioner
18 licensed by this state.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.