

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1735**

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**Introduced by Assembly Member Hall**

February 14, 2014

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An act to add Sections 381d and 381e to the Penal Code, relating to nitrous oxide.

LEGISLATIVE COUNSEL'S DIGEST

AB 1735, as amended, Hall. Nitrous oxide: dispensing and distributing.

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 make it a misdemeanor to dispense or distribute nitrous oxide to a person, knowing or having reason to believe that the *person is going to use the* nitrous oxide ~~will be used~~ in violation of the above provisions. ~~The bill would impose a mandatory fine of \$1,000 for a first conviction, a mandatory fine of \$2,000 for a 2nd conviction, and a mandatory fine of \$5,000 for a 3rd or subsequent conviction, and would allow the crime to also be punished by imprisonment in a county jail, not to exceed 6 months, and that person proximately causes great bodily injury or death to himself, herself, or another person, punishable by imprisonment in a county jail not to exceed 6 months, or by a fine~~

not to exceed \$1,000, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

The bill would require any person who dispenses or distributes nitrous oxide to record each transaction in a physical written document, as provided, and would require the person to make the document available for inspection, upon presentation of a duly authorized search warrant, during normal business hours to officers or employees of the California State Board of Pharmacy or other law enforcement agencies. The bill would require the purchaser to sign the document and provide a government-issued photo identification and residential address. ~~The bill would require the person dispensing or distributing the nitrous oxide to mark the packaging or tank containing the nitrous oxide with a label that identifies the person who dispensed or distributed the nitrous oxide and the person’s business address.~~

~~The bill would require each cartridge or tank of nitrous oxide to be as a printed warning, as specified.~~

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 381d is added to the Penal Code, to read:  
2 381d. A person who dispenses or distributes nitrous oxide to  
3 a person, knowing or having reason to believe that *the person is*  
4 *going to use* the nitrous oxide ~~will be used~~ in violation of Section  
5 381b, and that person proximately causes great bodily injury or  
6 death to himself, herself, or another person, is guilty of a  
7 misdemeanor, and shall be punished by ~~a mandatory fine of one~~  
8 ~~thousand dollars (\$1,000) upon a first conviction, by a mandatory~~  
9 ~~fine of two thousand dollars (\$2,000) upon a second conviction,~~  
10 ~~and by a mandatory fine of five thousand dollars (\$5,000) upon a~~  
11 ~~third or subsequent conviction; and may also be punished by~~  
12 ~~imprisonment in a county jail, not exceeding to exceed six months,~~  
13 ~~or by a fine not to exceed one thousand dollars (\$1,000), or by~~  
14 ~~both that fine and imprisonment.~~

1 SEC. 2. Section 381e is added to the Penal Code, to read:

2 381e. (a) A person who dispenses or distributes nitrous oxide  
3 shall record each transaction involving the dispensing or  
4 distribution of nitrous oxide in a physical written document. The  
5 person dispensing or distributing the nitrous oxide shall require  
6 the purchaser to sign the document and provide a complete  
7 residential address and present a valid government-issued photo  
8 identification. The person dispensing or distributing the nitrous  
9 oxide shall sign and date the document and shall retain the  
10 document at the person's business address for one year from the  
11 date of the transaction. The person shall make the documents  
12 available during normal business hours for inspection and copying,  
13 *upon presentation of a duly authorized search warrant*, by officers  
14 or employees of the California State Board of Pharmacy or of other  
15 law enforcement agencies of this state or the United States.

16 (b) The document used to record each transaction shall inform  
17 the purchaser of all of the following:

18 (1) That inhalation of nitrous oxide may have dangerous health  
19 effects.

20 (2) That it is a violation of state law to possess nitrous oxide or  
21 any substance containing nitrous oxide, with the intent to breathe,  
22 inhale, or ingest it for the purpose of intoxication.

23 (3) That it is a violation of state law to knowingly distribute or  
24 dispense nitrous oxide or any substance containing nitrous oxide,  
25 to a person who intends to breathe, inhale, or ingest it for the  
26 purpose of intoxication.

27 ~~(c) Each cartridge or tank of nitrous oxide dispensed or~~  
28 ~~distributed in this state, other than those intended for use by a~~  
29 ~~medical or dental practitioner, shall bear the following printed~~  
30 ~~warning:~~

31  
32 ~~“Do not inhale contents. Misuse may be dangerous to your~~  
33 ~~health”~~

34  
35 ~~(d) Each time a person dispenses or distributes nitrous oxide,~~  
36 ~~the person shall mark the packaging or tank containing the nitrous~~  
37 ~~oxide with a label or other device that identifies the person who~~  
38 ~~dispensed or distributed the nitrous oxide and the person's business~~  
39 ~~address.~~

40 (e)

1 (c) This section shall not apply to any person who administers  
2 nitrous oxide for the purpose of providing medical or dental care,  
3 if administered by a medical or dental practitioner licensed by this  
4 state or at the direction or under the supervision of a practitioner  
5 licensed by this state.

6 ~~(f)~~

7 (d) This section does not apply to the sale of nitrous oxide  
8 contained in food products for use as a propellant.

9 (e) *This section shall not apply to the sale or distribution of*  
10 *nitrous oxide by a licensed manufacturer.*

11 SEC. 3. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 the only costs that may be incurred by a local agency or school  
14 district will be incurred because this act creates a new crime or  
15 infraction, eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section 17556 of  
17 the Government Code, or changes the definition of a crime within  
18 the meaning of Section 6 of Article XIII B of the California  
19 Constitution.