

Assembly Bill No. 1735

CHAPTER 458

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

[Approved by Governor September 19, 2014. Filed with
Secretary of State September 19, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1735, 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, if it is known or should have been known that the person is going to use the nitrous oxide in violation of the above provisions, 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 a person who dispenses or distributes nitrous oxide to record each transaction in a written or electronic 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 also make it a misdemeanor to use, review, or disclose any information obtained from a person to whom nitrous oxide was distributed or dispensed, except as provided. By creating a new crime, 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.

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

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

381d. (a) 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 in violation of Section 381b, and that person proximately causes great bodily injury or death to himself, herself, or another person, is guilty of a misdemeanor, and shall be punished by imprisonment in a county jail, not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) This section shall not preclude prosecution under any other law.

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

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

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

(1) That inhalation of nitrous oxide outside of a clinical setting may have dangerous health effects.

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

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

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

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

(e) This section shall not apply to the sale or distribution of nitrous oxide by a wholesaler licensed by the Board of Pharmacy or manufacturer classified under Code Number 325120 or 424690 of the North American Industry Classification System (NAICS).

(f) (1) Information obtained from a person to whom nitrous oxide was distributed or dispensed pursuant to this section shall be confidential and shall be used solely for the purposes provided in this section.

(2) Except as provided in this section, a person who dispenses or distributes nitrous oxide shall not use, review, or disclose any information obtained pursuant to this section.

(3) A person who violates this subdivision shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

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