

Assembly Bill No. 1015

CHAPTER 266

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

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1015, 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 to sell or give away a device, canister, tank, or receptacle exclusively containing nitrous oxide, or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years of age, as specified. The bill would require the court to consider ordering a defendant to perform community service as a condition of probation. The bill would specify that it is a defense to this crime that the defendant honestly and reasonably believed that the minor involved in the offense was at least 18 years of age. A defendant who uses this defense would have the burden of proof by a preponderance of the evidence. The bill would further provide that, for the purpose of preventing a violation of the requirement, any person may refuse to sell 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 who is unable to produce adequate proof of age of majority. The bill would require a court to suspend the business license of a repeat offender under these provisions, except as specified. The bill would provide that its provisions do not apply to the sale of nitrous oxide contained in food products for use as a propellant or to the administration of nitrous oxide by licensed medical and dental practitioners or those they supervise, as specified. 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 381c is added to the Penal Code, to read:

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

(b) Every person who sells, furnishes, administers, distributes, gives away, or offers 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 years of age is guilty of a misdemeanor. The court shall consider ordering the person to perform community service as a condition of probation.

(c) (1) It is a defense to this crime that the defendant honestly and reasonably believed that the minor involved in the offense was at least 18 years of age.

(2) The defendant shall bear the burden of establishing this defense by a preponderance of the evidence.

(d) For the purpose of preventing a violation of this section, any person may refuse 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 who is unable to produce adequate proof of age of majority.

(e) On and after July 1, 2010, the court shall 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.

(f) 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.

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

SEC. 2. 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.