

STORAGE NAME: h0075s1.cj

DATE: March 3, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 75

RELATING TO: Nitrous Oxide

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Ball and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME & PUNISHMENT YEAS 7 NAYS 0
 - (2) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 75 amends current law by providing that a person who knowingly distributes, sells, purchases or transfers nitrous oxide or possesses more than 16 grams of nitrous oxide for a use other than those specified commits a third degree felony.

The Criminal Justice Estimating Conference has not yet evaluated this bill's impact on the Department of Corrections. However, it is unlikely that the new third degree felony offenses created by this section will have any significant prison bed impact. The bill does not appear to have a fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

According to information provided by the Compressed Gas Association, nitrous oxide, commonly known as "laughing gas", is a clear, colorless gas with a slightly sweet odor. Nitrous oxide is blended with oxygen and most commonly used as anesthesia in medical and dental treatment. The manufacture, distribution and possession of the gas in medical form is monitored by the Department of Health. Nitrous oxide is also used as an aerosol packaging propellant such as for food processing, as an oxidizer for manufacturing electronic components such as semiconductors, as an analytical chemistry oxidizer in atomic absorption spectrometry and as an oxidizer in chemical manufacturing. The quality of gas used for whipping cream is often the same as the medical grade. However, if the product is labeled as "technical grade" or labeled as nitrous oxide for atomic absorption, it is not regulated by the Department. Nitrous oxide is also used in auto racing to boost horsepower. This form is usually mixed with sulfur dioxide in order to give it a strong odor and discourage inhalation.

Inhalation of Nitrous Oxide

The use of nitrous oxide as a "recreational drug" has increased. Nitrous oxide is packaged in canisters as a compressed gas. Dealers typically either obtain large canisters of nitrous oxide or purchase "whippets". Whippets are small canisters which contain 4 to 8 grams of nitrous oxide and are manufactured to be used for making homemade whipped cream. Whippets are often sold at gourmet food shops and at "head shops". According to the Compressed Gas Association, a box of twenty four whippets can be purchased from a store for approximately 12 to 14 dollars.

When nitrous oxide is released from a pressurized canister it is too cold to be directly inhaled. Dealers typically fill balloons with nitrous oxide and sell them for three to five dollars each. A user then inhales the gas from the balloon. The gas in a whippet would fill approximately one balloon which is the amount that a typical user would inhale at one time.

At high concentrations, nitrous oxide causes a person who inhales it to experience a "high". In addition to the high, the user experiences slurred speech, difficulty maintaining balance, and slow response time. Nitrous oxide that is inhaled is absorbed through the lungs and rapidly distributed throughout the body. Within seconds, an individual can stop breathing because of the depression of the central nervous system caused by the nitrous oxide and

by the lower oxygen content that occurs as nitrous oxide displaces oxygen in the user's lungs.

The Department of Health reports that at least five deaths have occurred in Florida this year due to the inhalation of nitrous oxide - two in Leon County and one each in Wakulla, Duval and Brevard counties. According to the department, deaths from nitrous oxide inhalation may be under-reported because nitrous oxide quickly leaves the blood after death occurs.

Section 877.111 - Inhalation, Possession, Sale, Purchase of Nitrous Oxide With Intent to Ingest

Section 877.111(1) provides that it is unlawful for any person to inhale or ingest or to possess with the intent to breathe, inhale, or drink any compound, liquid, or chemical containing one of a specified list of chemicals for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual or mental processes. The list contains fifteen chemicals including acetone, toluene and nitrous oxide. The section also provides that the prohibition does not apply to the possession and use of these substances as part of the care or treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, chapter 464, or chapter 466 or to beverages controlled by the provisions of chapter 561, chapter 562, chapter 563, chapter 564, or chapter 565.

Section 877.111(2) provides that it is unlawful for any person to possess, buy, sell, or otherwise transfer any chemical substance specified in subsection (1) for the purpose of inducing or aiding any other person to violate the provision of subsection (1). Section 877.111(3) provides that any violation of either of the above two sections is a second degree misdemeanor.

The section also provides that any person who violates any of the provisions of the section may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Health pursuant to chapter 397, provided the director of the program approves the placement of the defendant in the program. Further, such required participation may be imposed in addition to, or in lieu of, any penalty or prohibition otherwise prescribed by law. However, the total time of such penalty, probation, and program participation cannot exceed 60 days, the maximum sentence for a second degree misdemeanor.

C. EFFECT OF PROPOSED CHANGES:

Inhalation, Ingestion, Possession, Sale, Distribution of Nitrous Oxide

The committee substitute amends section 877.111, F.S., to add a subsection dealing with nitrous oxide. This subsection provides that any person who knowingly distributes, sells, purchases, transfers, or possesses more than 16 grams of nitrous oxide for any use other than one of a specified list of uses commits a third degree felony which shall be known as unlawful distribution of nitrous oxide. The list of uses is as follows:

1. as part of the care or treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, chapter 464 or chapter 466;
2. as a food processing propellant;

3. as a semiconductor oxidizer;
4. as an analytical chemistry oxidizer in atomic absorption spectrometry;
5. in the production of chemicals used to inflate airbags;
6. when mixed with not less than 100 parts per million of sulfur dioxide; and
7. as an oxidizer for chemical production, combustion or jet propulsion.

CS/HB 75 further provides that for purposes of this subsection, in addition to proving by any other means that nitrous oxide was possessed, distributed, sold, purchased or transferred for any purpose not specified in the above list, any person who discharges, or who aids another in discharging nitrous oxide to inflate a balloon or any other object suitable for subsequent inhalation shall be deemed to have knowledge that the nitrous oxide's use was for a purpose other than those provided in the above list.

Thus, under the committee substitute, a person who inhales nitrous oxide or possesses it with the intent to inhale it would commit a second degree misdemeanor. This is the same as current law. However, a person who knowingly distributes, sells, purchases or transfers nitrous oxide or possesses more than 16 grams of nitrous oxide for a use other than those specified commits a third degree felony.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 877.111, F.S., making it a felony of the third degree to knowingly distribute, sell, purchase, transfer, or possess more than 16 grams of nitrous oxide. Provides exceptions.

Section 2: Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference met on February 2, 2000 and determined the prison bed impact to be insignificant.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor offered a strike-everything amendment to the bill which was adopted by the Committee on Crime & Punishment at its November 2, 1999 meeting, and was traveling with the bill.

Health Care Licensing & Regulation Committee

On January 19, 2000, the Committee on Health Care Licensing & Regulation adopted two technical amendments to the strike-everything amendment. The bill as amended was adopted as a committee substitute for HB 75.

The original bill created new sections of statute to make it a felony of the third degree to ingest, inhale, or possess with the intent to ingest or inhale nitrous oxide or any compound containing nitrous oxide. It also created a felony of the third degree to sell, deliver, or give to a person under 18 nitrous oxide or any compound containing nitrous oxide to be used for the purpose of inducing by breathing, inhaling, or ingesting a state of intoxication.

Unlike the original bill, the committee substitute does not create any new sections of statute but amends section 877.111, F.S., to add a subsection dealing with nitrous oxide. This subsection provides that any person who knowingly distributes, sells, purchases, transfers, or possesses more than 16 grams of nitrous oxide for any use other than one of a specified list of uses commits a third degree felony which shall be known as unlawful distribution of nitrous oxide.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Andrew "Andy" Palmer

Staff Director:

Lucretia Shaw Collins

AS FURTHER REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE

APPROPRIATIONS:

Prepared by:

Susan M. Mosychuk

Staff Director:

James P. DeBeaugrine