

STORAGE NAME: h0075b.cp

DATE: November 3, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 75

RELATING TO: Nitrous Oxide

SPONSOR(S): Representative Ball

TIED BILL(S): None

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) HEALTH CARE LICENSING & REGULATION
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 75 makes it a third degree felony to inhale or to possess with intent to inhale nitrous oxide for the purpose of inducing a condition of intoxication. The bill also makes it a third degree felony for any person to possess, buy or sell nitrous oxide for the purpose of aiding another person in becoming intoxicated. Additionally, the bill makes it a third degree felony to sell nitrous oxide to a person under 18 years of age for the purpose of inducing by inhalation a condition of intoxication.

NOTE: The Committee on Crime & Punishment adopted a strike-everything amendment which is traveling with the bill. The amendment maintains current law by providing that a person who inhales nitrous oxide or possesses it with the intent to inhale commits a second degree misdemeanor. The amendment changes 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. See the amendment section for details.

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 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.

Section 499.039 - Sale of Nitrous Oxide to a Minor

Sections 499.001 through 499.081 are known as the "Florida Drug and Cosmetic Act". Section 499.039 provides that it is unlawful for any person to sell, deliver or give to a person under the age of 18 any compound containing a substance from a specified list for the purpose of inducing by breathing, inhaling or ingesting a condition of intoxication or which is intended to disturb the auditory, visual or other physical or mental processes.

The section also provides that upon a first violation, the Department of Health may issue a warning according to section 499.071 if the violation has not caused temporary or permanent physical or mental injury to the user. If the violation has caused temporary or permanent physical or mental injury to the user, the department may impose fines according to section 499.066 and may report any violation to the state attorney's office. Section 499.066(3) provides that the Department of Health may impose an administrative fine, not to exceed \$5,000 per day, for the violation of any provision of sections 499.001 through 499.081. This includes the section prohibiting sale of nitrous oxide to a minor.

C. EFFECT OF PROPOSED CHANGES:

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

The bill creates section 877.112 of Florida Statutes which provides that it is unlawful for any person to inhale or ingest, or to possess with intent to breathe or inhale, any compound containing nitrous oxide for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual or mental processes. The section specifies that the prohibition does not apply to the possession and use of nitrous oxide:

1. when mixed with not less than 100 parts per million of sulfur dioxide;
2. as part of the care or treatment of a disease or injury by a practitioner licenses under chapter 458, chapter 459, chapter 464 or chapter 466;
3. for use as a food processing propellant;
4. for use as a semiconductor oxidizer;
5. for use as an analytical chemistry oxidizer in atomic absorption spectrometry or;
6. in the production of chemicals used to inflate airbags.

The bill also provides that it is unlawful for any person to possess, buy, sell, distribute, or otherwise transfer nitrous oxide as specified in subsection (1) for the purpose of inducing or aiding any other person to violate the provisions of subsection (1).

The bill provides that any person who violates any of the provisions of this section commits a third degree felony, punishable as provided in s. 775.082, 775.083 or s. 775.084. Additionally, the bill provides that any person who violates this 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 Children and Family Services pursuant to the provisions of chapter 397, provided that the director of the program approves the placement of the defendant in the program.

The bill also amends section 877.111 to remove nitrous oxide from the list of chemicals that are a second degree misdemeanor to possess. Essentially, HB 75 would increase the penalty for inhaling or possessing nitrous oxide for the purpose of becoming intoxicated from a second degree misdemeanor to a third degree felony. Thus, the maximum penalty for the offense would increase from sixty days in jail to five years in prison.

Sale of Nitrous Oxide to Minors

The bill creates section 499.037 which provides that it is unlawful for any person to sell, deliver or give to a person under 18 years of age any compound or chemical containing nitrous oxide for the purpose of inducing by breathing, inhaling or ingesting a condition of intoxication or which is intended to distort or disturb the auditory, visual or other physical or mental processes.

The bill provides that the section does not apply to the sale, delivery or giving of nitrous oxide to a person under 18 years of age, when the nitrous oxide is:

1. mixed with not less than 100 parts per million of sulfur dioxide;
2. part of the care or treatment of a disease or injury by a practitioner licenses under chapter 458, chapter 459, chapter 464 or chapter 466;
3. for use as a food processing propellant;
4. for use as a semiconductor oxidizer;
5. for use as an analytical chemistry oxidizer in atomic absorption spectrometry;
6. used in the production of chemicals used to inflate airbags.

The bill provides that if any violation of this section has caused temporary or permanent physical or mental injury to the user, the Department of Health may impose fines according to s. 499.066 and may report any violation to the appropriate state attorney for prosecution. The bill further requires the Department of Health to adopt rules to implement the section.

Section 499.005 provides a list of unlawful acts involving chemicals and drugs. HB 75 adds the sale of nitrous oxide to a person under the age of 18 to this list of prohibited acts. Section 499.069 provides that any person who violates 499.005 commits a second degree misdemeanor. However, any person who commits a violation of one of five specified provisions of 499.005 commits a third degree felony. These five acts are: 1) making or selling counterfeit drugs; 2) falsely representing a drug; 3) purchasing a prescription drug from someone not authorized to distribute the drug; 4) selling of a prescription drug to someone not authorized to purchase the drug; 5) selling or purchasing of a drug sample. The bill amends section 499.069 to add the sale of nitrous oxide to a person under the age of 18 in the list of offenses punishable as a third degree felony. The bill also amends section 499.039 which makes it illegal to sell a list of substances to a person under the age of 18 and removes nitrous oxide from the list. The effect of these changes will be to increase the maximum punishment for sale of nitrous oxide to a minor for the purpose of inhaling and causing intoxication from a fine to a third degree felony.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates 877.112 which makes it third degree felony to inhale, ingest, possess, sell or purchase nitrous oxide for purpose of inducing intoxication. Provides exceptions.

Section 2: Amends s. 877.111 to remove nitrous oxide from list of harmful chemical substances that is second degree misdemeanor to possess or buy with intent to become intoxicated.

Section 3: Creates s. 499.037 which makes it unlawful for any person to sell nitrous oxide to person under 18 years of age for purpose of inhaling.

Section 4: Amends s. 499.039 to remove nitrous oxide from list of harmful chemicals that it is unlawful to sell to minor.

Section 5: Amends section 499.005 to add sale of nitrous oxide to person under 18 to list of prohibited acts.

Section 6: Technical. Changes reference to 499.005 to reflect renumbering.

Section 7: Technical. Changes cross reference to s.499.005(21) to reflect fact that renumbered to s. 499.005(22).

Section 8: Provides 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 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.

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:

The bill requires the Department of Health to implement rules regarding nitrous oxide.

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. Unlike the bill itself, the amendment would not create any new sections of statute but would amend section 877.111 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 are as follows:

1. as part of the care or treatment of a disease or injury by a practitioner licenses 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
7. as an oxidizer for chemical production, combustion or jet propulsion.

The bill 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.

STORAGE NAME: h0075b.cp

DATE: November 3, 1999

PAGE 8

Thus, under the amendment, 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.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz