STATE OF NEW YORK

9287

2025-2026 Regular Sessions

IN ASSEMBLY

December 10, 2025

Introduced by M. of A. K. BROWN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the penal law, in relation to criminalizing certain sales and possessions of nitrous oxide; and to repeal certain provisions of the public health law relating thereto (Part A); to amend the general business law, in relation to regulating the sale of nitrous oxide; and to repeal certain provisions of such law relating thereto (Part B); to amend the public health law, in relation to establishing an education and outreach program relating to nitrous oxide (Part C); and to amend the vehicle and traffic law, in relation to criminalizing driving while ability impaired by nitrous oxide (Part D)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act enacts into law components of legislation relating to the possession and sale of nitrous oxide. Each component is wholly contained within a Part identified as Parts A through D. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision 5 of section 3380 of the public health law is REPEALED.

§ 2. Paragraph b of subdivision 6 of section 3380 of the public health law, as amended by chapter 234 of the laws of 1985, is amended to read as follows:

(b) Any person who violates any provision of subdivision four [~~or five~~] of this section shall be guilty of a class A misdemeanor.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 3. The penal law is amended by adding a new article 223 to read as follows:

ARTICLE 223
NITROUS OXIDE

Section 223.00 Nitrous oxide; definitions.
223.10 Criminal possession of nitrous oxide.
223.20 Criminal sale of nitrous oxide in the second degree.
223.30 Criminal sale of nitrous oxide in the first degree.

§ 223.00 Nitrous oxide; definitions.

1. (a) "Acceptable use" means the possession and use of nitrous oxide:

i. by a manufacturer as part of a manufacturing process or industrial operation by a person at least twenty-one years of age;

ii. by a health care professional for administration to a patient under their care when acting within the professional's lawful scope of practice under title eight of the education law;

iii. for automotive or rocketry purposes by a person at least twenty-one years of age, provided the nitrous oxide in question is combined with other fuels or chemicals designed to deter human consumption;

iv. by an individual at least eighteen years of age using nitrous oxide as a propellant in food preparation in a food service establishment or food service training program;

v. in an amount not to exceed one hundred grams of nitrous oxide total by an individual at least twenty-one years of age for personal use in food preparation;

vi. in a form and manner approved in regulation by the commissioner of health or the commissioner of education.

(b) The presence of additional flavoring in or labeling on any part of a nitrous oxide container referring to the substance therein being flavored, except to note the presence of a chemical designed to deter misuse, shall create a rebuttable presumption against the nitrous oxide in question being for an acceptable use.

2. For the purposes of this article, the term "nitrous oxide" shall not include nitrous oxide that has been premixed with a dairy product or a dairy-like non-dairy product for the purposes of making a whipped topping.

§ 223.10 Criminal possession of nitrous oxide.

A person is guilty of criminal possession of nitrous oxide when they knowingly possess or use nitrous oxide for any reason other than an acceptable use.

Criminal possession of nitrous oxide is a class A misdemeanor.

§ 223.20 Criminal sale of nitrous oxide in the second degree.

A person is guilty of criminal sale of nitrous oxide in the second degree when they knowingly and unlawfully sell nitrous oxide to another person and have reasonable cause to believe that the product sold or offered for sale will be used for a purpose other than an acceptable use.

Criminal sale of nitrous oxide is a class D felony.

§ 223.30 Criminal sale of nitrous oxide in the first degree.

A person is guilty of criminal sale of nitrous oxide in the first degree when, being over twenty-one years old, they knowingly and unlawfully sell nitrous oxide to another person who they know or reasonably should have known is under the age of twenty-one in violation of section 223.20 of this article.

Criminal sale of nitrous oxide is a class C felony.

§ 4. This act shall take effect immediately.

PART B

Section 1. Section 834 of the general business law is REPEALED.

§ 2. The general business law is amended by adding a new article 38-C to read as follows:

ARTICLE 38-C
NITROUS OXIDE

Section 840. Definitions.
841. Minimum purchase age.
842. Restrictions on the retail sale of nitrous oxide; permit required.
843. Restrictions on the retail sale of nitrous oxide; quantity limits; point of sale requirements; stop sale system.
844. Possession and sale of nitrous oxide; other than acceptable use.
845. Power of municipality to revoke license or permit.
846. Enforcement.

§ 840. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Acceptable use" shall have the same meaning as defined in section 223.00 of the penal law.

2. "Nitrous oxide" means nitrous oxide but shall not include nitrous oxide that has been premixed with a dairy product or a dairy-like non-dairy product for the purposes of making a whipped topping.

3. "Real-time stop sale system" means a system intended for use by law enforcement agencies and retail establishments, that:

(a) is installed, operated, and maintained by an entity or entities chosen by the department of state pursuant to a competitive bidding process;

(b) complies with information security policies set by the state police or the relevant regulatory authority;

(c) uses a mechanism to prevent completion of a sale of nitrous oxide that would violate state limits; and

(d) is equipped with an override mechanism that an employee may activate if completion of a transaction is necessary to prevent imminent bodily harm, with each use being recorded in the system.

4. "Retail sale" means a sale to a consumer or to any person for any purpose other than for resale. For the purposes of the quantity limits established in section eight hundred forty-three of this article, the term "retail sale" shall not include sales of nitrous oxide to:

(a) the operator or agent of an operator of a food service establishment that provides a business license or certificate of authority as proof of their operation of said establishment;

(b) a manufacturer as part of a manufacturing process or industrial operation by a person at least twenty-one years of age;

(c) a health care professional for administration to a patient under their care when acting within the professional's lawful scope of practice under title eight of the education law; or

(d) a person at least twenty-one years of age for automotive or rocketry purposes, provided the nitrous oxide in question is combined with other fuels or chemicals designed to deter human consumption.

§ 841. Minimum purchase age. 1. No person, corporation, partnership, limited liability company, firm, or any other business entity doing business within this state shall sell or offer for sale nitrous oxide to any person under the age of twenty-one.

2. Any person, corporation, partnership, limited liability company, firm, or other business entity doing business within the state, including persons and entities conducting transactions via the internet, that sells, offers for sale or distributes nitrous oxide, including contract or common carriers, shall require proof of legal age before allowing an individual to purchase and/or take receipt of a shipment of nitrous oxide.

3. Any person, corporation, partnership, limited liability company, firm, or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than two thousand five hundred dollars for an initial offense and not more than five thousand dollars for the second and each subsequent offense.

§ 842. Restrictions on the retail sale of nitrous oxide; permit required. 1. It shall be a violation of this section for any person, corporation, partnership, limited liability company, firm, or other business entity doing business within the state to possess with the intent to sell or offer for sale at retail nitrous oxide without a permit issued by the secretary pursuant to an application process developed by the department in regulation. Such application shall contain a section requiring the prospective permittee to attest as to what acceptable use or uses the nitrous oxide shall be sold for.

2. No permit for the retail sale of nitrous oxide shall be issued to any person, corporation, partnership, limited liability company, firm, or any other business entity to conduct business within two hundred fifty feet of a school, public playground, library, or house of worship.

3. No permit for the retail sale of nitrous oxide shall be issued to any entity whose place of business is a convenience store as defined in section two hundred fourteen-h of the agriculture and markets law or the premises of a retail dealer as defined in section thirteen hundred ninety-nine-aa of the public health law.

4. No permit for the retail sale of nitrous oxide shall be issued to any entity that intends to conduct sales of nitrous oxide on a mobile basis.

5. Any person, corporation, partnership, limited liability company, firm, or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than five thousand dollars for an initial offense and not more than ten thousand dollars for the second and each subsequent offense.

§ 843. Restrictions on the retail sale of nitrous oxide; quantity limits; point of sale requirements; stop sale system. 1. Quantity limits. No person, corporation, partnership, limited liability company, firm, or other business entity doing business within the state shall sell more than one hundred grams of nitrous oxide by net weight of gas, irrespective of the number or size of containers, in any thirty-day period.

2. Point of sale requirements. (a) All nitrous oxide products offered for retail sale must be displayed behind a checkout counter or in a locked case where the public is not permitted.

(b) Prior to sale, the retailer must require valid government-issued photo identification.

(c) The retailer must record in an electronic or paper log:

(i) name and address of purchaser;

(ii) date and time of sale, type and number of ID presented;

(iii) quantity purchased; and

(iv) the purchaser's signature.

3. Stop sale system. Before completing a sale, the retailer must electronically submit required information to the real-time stop sale system administered by the department of state.

(a) If the electronic system is unavailable, a paper log shall be kept until full system functionality resumes. At the time that full functionality is restored, all transactions recorded during the outage shall be entered into the electronic sales system within twenty-four hours.

(b) The system shall forward transaction records to the department of state weekly and provide law enforcement with real-time access, as authorized by such department.

(c) The system must generate a "stop sale alert" when a prospective transaction would exceed legal limits.

(d) The sale shall not proceed if a stop sale alert is generated, unless the override mechanism is used due to a reasonable fear of imminent harm, with each override logged by the system.

4. Penalties. Any person, corporation, partnership, limited liability company, firm, or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than five hundred dollars for an initial offense and not more than one thousand dollars for the second and each subsequent offense.

5. Liability limitations. (a) Retailers utilizing the system in good faith shall not be civilly liable for acts or omissions in carrying out their duties, unless acting with negligence or willful misconduct.

(b) Owners and operators of a retail establishment with a compliance training program in place may be shielded from penalties if they establish that the violation was by an employee without their knowledge.

6. Preemption. This section preempts all local ordinances and regulations governing the retail sale of nitrous oxide, with all such ordinances enacted prior to the effective date rendered void.

§ 844. Possession and sale of nitrous oxide; other than acceptable use. 1. It shall be a violation of this section for any person, corporation, partnership, limited liability company, firm, or other business entity doing business within the state to possess with intent to sell, offer for sale, or purchase nitrous oxide under circumstances evincing knowledge that the nitrous oxide is possessed, sold, or purchased for any reason other than an acceptable use.

2. Any person, corporation, partnership, limited liability company, firm, or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than one thousand dollars for an initial offense and not more than two thousand five hundred dollars for the second and each subsequent offense.

§ 845. Power of municipality to revoke license or permit. 1. A county, town, city, or village that issues a license or permit authorizing any person, firm, or corporation to engage in the selling or offering for sale of any merchandise may revoke such license or permit upon a finding, pursuant to a hearing held thereon, that such person, firm or corporation has sold or offered for sale nitrous oxide in violation of this article.

2. The possession with intent to sell or offer for sale of nitrous oxide for other than an acceptable use is hereby declared to be a nuisance. Where any such nitrous oxide shall be taken from the possession of any person, the same shall be surrendered and forfeited to the sheriff of the county wherein the same shall be taken, except that in a city having a population of seventy-five thousand or more, the same shall be surrendered and forfeited to the police commissioner or other head of the police force or department of said city. Except that in the

counties of Nassau and Suffolk, the same shall be surrendered and forfeited to the commissioner of such county's police department.

§ 846. Enforcement. The attorney general or any state or local health officer, town, village or city attorney, or the chief executive officer of a municipality may institute an action in a court of competent jurisdiction to enjoin any activity prohibited pursuant to this article.

§ 3. This act shall take effect immediately; provided, however, that subdivisions 3, 4, 5, and 6 of section 843 of the general business law, as added by section two of this act, shall take effect one year after this act shall have become a law. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.

PART C

Section 1. Subdivision 1 of section 207 of the public health law is amended by adding a new paragraph (t) to read as follows:

(t) The dangers associated with the misuse of nitrous oxide, including, but not limited to, vitamin B-12 deficiency, impaired motor function, psychiatric disturbances, loss of consciousness, asphyxiation, and death. The commissioner shall consult with the commissioner of the office of addiction services and supports when developing education and outreach programs under this provision.

§ 2. This act shall take effect immediately.

PART D

Section 1. Section 1192 of the vehicle and traffic law is amended by adding a new subdivision 4-b to read as follows:

4-b. Driving while ability impaired by nitrous oxide. (a) No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of nitrous oxide, whether solely or in combination with alcohol and/or another drug or drugs.

(b) For any prosecution under this subdivision, there shall be a rebuttable presumption that this offense has been committed when a driver appears to be impaired and: (i) the driver has open or empty nitrous oxide containers in their possession; or (ii) the driver tests positive for nitrous oxide on a test designated in regulation by the commissioner of motor vehicles, in consultation with the commissioner of health, as proof of intoxication.

§ 2. This act shall take effect immediately.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective dates of Parts A through D of this act shall be as specifically set forth in the last section of such Parts.