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HOUSE BILL NO. 648

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Delegate Kene)

A BILL to amend and reenact § 18.2-264 of the Code of Virginia, relating to sale, distribution, etc. of nitrous oxide prohibited; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-264 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-264. Inhaling drugs or other noxious chemical substances or causing, etc. others to do so prohibited; sale, distribution, etc. of nitrous oxide prohibited; penalties.

A. For the purposes of this section:

"Noxious chemical substances" includes fingernail polish and model airplane glue and chemicals containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, fluorinated hydrocarbons or vapors, nitrous oxide, or hydrogenated fluorocarbons.

"Practitioner" means the same as that term is defined in § 54.1-3401.

B. It is unlawful, except under the direction of a practitioner as defined in § 54-1-3401, for any person deliberately to smell or inhale any drugs or any other noxious chemical substances with the intent to become intoxicated, inebriated, excited, or stupefied or to dull the brain or nervous system. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

B. C. It is unlawful for any person, other than one duly licensed, deliberately to cause, invite, or induce any person to smell or inhale any drugs or any other noxious chemical substances with the intent to intoxicate, inebriate, excite, stupefy, or dull the brain or nervous system of such person. Any person violating the provisions of this subsection is guilty of a Class 2 misdemeanor.

C. D. 1. It is unlawful for any person to sell, distribute, or offer to sell or distribute a device that is designed or intended to deliver a gas containing nitrous oxide *through direct inhalation* to any person under 18 years of age for any purpose who is not exempted under subdivision E 1.

2. It is unlawful for any person to sell, distribute, or offer to sell or distribute nitrous oxide that has, or is marketed as having, the taste or smell of any food or beverage, including any fruit, candy, dessert, alcoholic beverage, herb, or spice, that is distinguishable by an ordinary consumer either prior to or during consumption or use of such nitrous oxide to any person who is not exempted under subdivision E 1.

3. This subsection shall not apply to (i) a device, as described in subdivision 1, for nitrous oxide that is denatured or otherwise rendered unfit for human consumption or (ii) any person or establishment that is (a) solely engaged in the business of selling or distributing catering supplies, food processing equipment, or compressed gases for industrial or medical use or (b) a health care provider as defined in § 32.1-127.1:03.

3.4. Any person who fails to make diligent inquiry as to whether the person trying to obtain a device as described in subdivision 1 is 18 years of age or older or violates the provisions of this subsection is guilty of a Class 1 misdemeanor.

D. For purposes of this section: "Diligent inquiry" means a good faith effort to determine the age of a person that includes an examination of any valid photo identification that establishes the identity and age of such person. "Noxious chemical substances" includes fingernail polish and model airplane glue and chemicals containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, fluorinated hydrocarbons or vapors, nitrous oxide, or hydrogenated fluorocarbons. E. 1. It is unlawful for any person to sell, distribute, or offer to sell or distribute a container of nitrous oxide that exceeds eight grams, except to:

a. A health care provider;

b. A person or establishment licensed or otherwise engaged in the business of selling or distributing catering supplies, food processing equipment, or food service equipment;

c. A person or establishment engaged in the business of selling or distributing compressed gases for industrial, manufacturing, or research use;

d. A person or establishment engaged in the sale, distribution, or installation of automotive performance equipment, provided that the nitrous oxide has been denatured or otherwise rendered unfit for human consumption;

e. An institution of higher education or research institution for scientific or educational purposes;

f. A person or establishment engaged in aerospace manufacturing or aerospace propulsion applications;
or

g. A person or establishment for use as a propellant in food or food preparation for a restaurant, food and beverage service, or houseware product.

2. It is unlawful for any person to purchase or attempt to purchase a container of nitrous oxide that exceeds eight grams unless such person is exempted under subdivision 1.

60 *3. A violation of this subsection is a Class 1 misdemeanor.*