

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 18.2-264 of the Code of Virginia, relating to sale, distribution, etc. of nitrous*
 3 *oxide prohibited; penalties.*

4 [H 648]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 18.2-264 of the Code of Virginia is amended and reenacted as follows:**8 **§ 18.2-264. Inhaling drugs or other noxious chemical substances or causing, etc. others to do so**
 9 **prohibited; sale, distribution, etc. of nitrous oxide prohibited; penalties.**10 *A. For the purposes of this section:*11 *"Noxious chemical substances" includes fingernail polish and model airplane glue and chemicals*
 12 *containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, fluorinated*
 13 *hydrocarbons or vapors, nitrous oxide, or hydrogenated fluorocarbons.*14 *"Practitioner" means the same as that term is defined in § 54.1-3401.*15 *B. It is unlawful, except under the direction of a practitioner as defined in § 54.1-3401, for any person*
 16 *deliberately to smell or inhale any drugs or any other noxious chemical substances with the intent to become*
 17 *intoxicated, inebriated, excited, or stupefied or to dull the brain or nervous system. Any person violating the*
 18 *provisions of this subsection is guilty of a Class 1 misdemeanor.*19 *B- C. It is unlawful for any person, other than one duly licensed, deliberately to cause, invite, or induce*
 20 *any person to smell or inhale any drugs or any other noxious chemical substances with the intent to*
 21 *intoxicate, inebriate, excite, stupefy, or dull the brain or nervous system of such person. Any person violating*
 22 *the provisions of this subsection is guilty of a Class 2 misdemeanor.*23 *C- D. 1. It is unlawful for any person to sell, distribute, or offer to sell or distribute a device that is*
 24 *designed or intended to deliver a gas containing nitrous oxide through direct inhalation to any person under*
 25 *18 years of age for any purpose who is not exempted under subdivision E 1.*26 *2. It is unlawful for any person to sell, distribute, or offer to sell or distribute nitrous oxide that has, or is*
 27 *marketed as having, the taste or smell of any food or beverage, including any fruit, candy, dessert, alcoholic*
 28 *beverage, herb, or spice, that is distinguishable by an ordinary consumer either prior to or during*
 29 *consumption or use of such nitrous oxide to any person who is not exempted under subdivision E 1.*30 *3. This subsection shall not apply to (i) a device, as described in subdivision 1, for nitrous oxide that is*
 31 *denatured or otherwise rendered unfit for human consumption or (ii) any person or establishment that is (a)*
 32 *solely engaged in the business of selling or distributing catering supplies, food processing equipment, or*
 33 *compressed gases for industrial or medical use or (b) a health care provider as defined in § 32.1-127.1-03.*34 *3- 4. Any person who fails to make diligent inquiry as to whether the person trying to obtain a device as*
 35 *described in subdivision 1 is 18 years of age or older or violates the provisions of this subsection is guilty of a*
 36 *Class 1 misdemeanor.*37 *D. For purposes of this section: "Diligent inquiry" means a good faith effort to determine the age of a*
 38 *person that includes an examination of any valid photo identification that establishes the identity and age of*
 39 *such person. "Noxious chemical substances" includes fingernail polish and model airplane glue and chemicals*
 40 *containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, fluorinated*
 41 *hydrocarbons or vapors, nitrous oxide, or hydrogenated fluorocarbons. E. 1. It is unlawful for any person to*
 42 *sell, distribute, or offer to sell or distribute a container of nitrous oxide that exceeds eight grams, except to:*43 *a. A health care provider;*44 *b. A person or establishment licensed or otherwise engaged in the business of selling or distributing*
 45 *catering supplies, food processing equipment, or food service equipment;*46 *c. A person or establishment engaged in the business of selling or distributing compressed gases for*
 47 *industrial, manufacturing, or research use;*48 *d. A person or establishment engaged in the sale, distribution, or installation of automotive performance*
 49 *equipment, provided that the nitrous oxide has been denatured or otherwise rendered unfit for human*
 50 *consumption;*51 *e. An institution of higher education or research institution for scientific or educational purposes;*52 *f. A person or establishment engaged in aerospace manufacturing or aerospace propulsion applications;*
 53 *or*54 *g. A person or establishment for use as a propellant in food or food preparation for a restaurant, food and*
 55 *beverage service, or houseware product.*56 *2. It is unlawful for any person to purchase or attempt to purchase a container of nitrous oxide that*

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57 *exceeds eight grams unless such person is exempted under subdivision 1.*
58 *3. A violation of this subsection is a Class 1 misdemeanor.*