

By Representative Ball

1                                   A bill to be entitled  
2           An act relating to nitrous oxide; creating s.  
3           877.112, F.S.; providing that it is unlawful to  
4           inhale or ingest, to possess with intent to  
5           breathe or inhale, or to possess, buy, sell, or  
6           transfer nitrous oxide, except in a specified  
7           mixture or for specified purposes; providing a  
8           penalty; amending s. 877.111, F.S., to conform;  
9           creating s. 499.037, F.S.; providing that it is  
10          unlawful to sell, deliver, or give nitrous  
11          oxide to a person under 18 years of age for  
12          specified purposes; providing exceptions;  
13          amending s. 499.039, F.S., to conform; amending  
14          s. 499.005, F.S.; including the sale,  
15          distribution, or transfer of nitrous oxide to a  
16          person under 18 years of age within the acts  
17          prohibited under pt. I of ch. 499, F.S.;  
18          amending s. 499.069, F.S.; providing a penalty  
19          for violation of s. 499.037, F.S.; amending s.  
20          499.012, F.S.; correcting a cross reference;  
21          providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Section 877.112, Florida Statutes, is  
26 created to read:

27           877.112 Inhalation, ingestion, possession, sale,  
28 distribution, purchase, or transfer of nitrous oxide;  
29 penalties.--

30           (1)(a) It is unlawful for any person to inhale or  
31 ingest, or to possess with intent to breathe or inhale, any

1 compound or chemical containing nitrous oxide for the purpose  
2 of inducing a condition of intoxication or which distorts or  
3 disturbs the auditory, visual, or mental processes.

4 (b) This section does not apply to the possession and  
5 use of nitrous oxide:

6 1. When mixed with not less than 100 parts per million  
7 of sulfur dioxide.

8 2. As part of the care or treatment of a disease or  
9 injury by a practitioner licensed under chapter 458, chapter  
10 459, chapter 464, or chapter 466.

11 3. For use as a food processing propellant.

12 4. For use as a semiconductor oxidizer.

13 5. For use as an analytical chemistry oxidizer in  
14 atomic absorption spectrometry.

15 6. In the production of chemicals used to inflate  
16 airbags.

17 (2) It is unlawful for any person to possess, buy,  
18 sell, distribute, or otherwise transfer nitrous oxide as  
19 specified in subsection (1) for the purpose of inducing or  
20 aiding any other person to violate the provisions of  
21 subsection (1).

22 (3) Any person who violates any of the provisions of  
23 this section commits a felony of the third degree, punishable  
24 as provided in s. 775.082, s. 775.083, or s. 775.084.

25 (4) Any person who violates any of the provisions of  
26 this section may, in the discretion of the trial judge, be  
27 required to participate in a substance abuse services program  
28 approved or regulated by the Department of Children and Family  
29 Services pursuant to the provisions of chapter 397, provided  
30 the director of the program approves the placement of the  
31 defendant in the program. Such required participation may be

1 imposed in addition to, or in lieu of, any penalty or  
2 probation otherwise prescribed by law. However, the total time  
3 of such penalty, probation, and program participation shall  
4 not exceed the maximum length of sentence possible for the  
5 offense.

6 Section 2. Section 877.111, Florida Statutes, is  
7 amended to read:

8 877.111 Inhalation, ingestion, possession, sale,  
9 purchase, or transfer of harmful chemical substances;  
10 penalties.--

11 (1) It is unlawful for any person to inhale or ingest,  
12 or to possess with intent to breathe, inhale, or drink, any  
13 compound, liquid, or chemical containing toluol, hexane,  
14 trichloroethylene, acetone, toluene, ethyl acetate, methyl  
15 ethyl ketone, trichloroethane, isopropanol, methyl isobutyl  
16 ketone, ethylene glycol monomethyl ether acetate,  
17 cyclohexanone, ~~nitrous oxide~~, diethyl ether, alkyl nitrites  
18 (butyl nitrite), or any similar substance for the purpose of  
19 inducing a condition of intoxication or which distorts or  
20 disturbs the auditory, visual, or mental processes. This  
21 section does not apply to the possession and use of these  
22 substances as part of the care or treatment of a disease or  
23 injury by a practitioner licensed under chapter 458, chapter  
24 459, chapter 464, or chapter 466 or to beverages controlled by  
25 the provisions of chapter 561, chapter 562, chapter 563,  
26 chapter 564, or chapter 565.

27 (2) It is unlawful for any person to possess, buy,  
28 sell, or otherwise transfer any chemical substance specified  
29 in subsection (1) for the purpose of inducing or aiding any  
30 other person to violate the provisions of subsection (1).

31

1           (3) Any person who violates any of the provisions of  
2 this section shall upon conviction be guilty of a misdemeanor  
3 of the second degree, punishable as provided in s. 775.082 or  
4 s. 775.083.

5           (4) Any person who violates any of the provisions of  
6 this section may, in the discretion of the trial judge, be  
7 required to participate in a substance abuse services program  
8 approved or regulated by the Department of Children and Family  
9 Services pursuant to the provisions of chapter 397, provided  
10 the director of the program approves the placement of the  
11 defendant in the program. Such required participation may be  
12 imposed in addition to, or in lieu of, any penalty or  
13 probation otherwise prescribed by law. However, the total time  
14 of such penalty, probation, and program participation shall  
15 not exceed the maximum length of sentence possible for the  
16 offense.

17           Section 3. Section 499.037, Florida Statutes, is  
18 created to read:

19           499.037 Sale, distribution, or transfer of nitrous  
20 oxide; penalty; authority for enforcement.--

21           (1)(a) It is unlawful for a person to sell, deliver,  
22 or give to a person under 18 years of age any compound or  
23 chemical containing nitrous oxide for the purpose of inducing  
24 by breathing, inhaling, or ingesting a condition of  
25 intoxication or which is intended to distort or disturb the  
26 auditory, visual, or other physical or mental processes.

27           (b) This section does not apply to the sale, delivery,  
28 or giving of nitrous oxide to a person under 18 years of age,  
29 when the nitrous oxide is:

30           1. Mixed with not less than 100 parts per million of  
31 sulfur dioxide.

1           2. Part of the care or treatment of a disease or  
2 injury by a practitioner licensed under chapter 458, chapter  
3 459, chapter 464, or chapter 466.

4           3. For use as a food processing propellant.

5           4. For use as a semiconductor oxidizer.

6           5. For use as an analytical chemistry oxidizer in  
7 atomic absorption spectrometry.

8           6. Used in the production of chemicals used to inflate  
9 airbags.

10           (2) If any violation of this section has caused  
11 temporary or permanent physical or mental injury to the user,  
12 the department may, pursuant to chapter 120, impose fines  
13 according to s. 499.066 and may report any violation to the  
14 appropriate state attorney for prosecution.

15           (3) The Department of Health shall adopt rules to  
16 implement this section.

17           Section 4. Section 499.039, Florida Statutes, is  
18 amended to read:

19           499.039 Sale, distribution, or transfer of harmful  
20 chemical substances; penalties; authority for enforcement.--It  
21 is unlawful for a person to sell, deliver, or give to a person  
22 under the age of 18 years any compound, liquid, or chemical  
23 containing toluol, hexane, trichloroethylene, acetone,  
24 toluene, ethyl acetate, methyl ethyl ketone, trichloroethane,  
25 isopropanol, methyl isobutyl ketone, ethylene glycol  
26 monomethyl ether acetate, cyclohexanone, ~~nitrous oxide,~~  
27 diethyl ether, alkyl nitrites (butyl nitrite), or any similar  
28 substance for the purpose of inducing by breathing, inhaling,  
29 or ingesting a condition of intoxication or which is intended  
30 to distort or disturb the auditory, visual, or other physical  
31 or mental processes.

1 (1) On the first violation of this section, the  
2 department may issue a warning according to s. 499.071, if the  
3 violation has not caused temporary or permanent physical or  
4 mental injury to the user.

5 (2) If any violation of this section has caused  
6 temporary or permanent physical or mental injury to the user,  
7 the department may, pursuant to chapter 120, impose fines  
8 according to s. 499.066 and may report any violation to the  
9 appropriate state attorney for prosecution.

10 (3) The Department of Health shall adopt rules to  
11 implement this section.

12 Section 5. Subsections (17) through (24) of section  
13 499.005, Florida Statutes, are renumbered as subsections (18)  
14 through (25), respectively, and a new subsection (17) is added  
15 to said section to read:

16 499.005 Prohibited acts.--It is unlawful to perform or  
17 cause the performance of any of the following acts in this  
18 state:

19 (17) The sale, distribution, or transfer of nitrous  
20 oxide, except as specifically provided in s. 499.037(1)(b), to  
21 a person under the age of 18 years.

22 Section 6. Section 499.069, Florida Statutes, is  
23 amended to read:

24 499.069 Punishment for violations of s. 499.005;  
25 dissemination of false advertisement.--

26 (1) Any person who violates any of the provisions of  
27 s. 499.005 is guilty of a misdemeanor of the second degree,  
28 punishable as provided in s. 775.082 or s. 775.083; but, if  
29 the violation is committed after a conviction of such person  
30 under this section has become final, such person is guilty of  
31 a misdemeanor of the first degree, punishable as provided in

1 s. 775.082 or s. 775.083 or as otherwise provided in ss.  
2 499.001-499.081, except that any person who violates  
3 subsection (8), subsection (10), subsection (14), subsection  
4 (15), ~~or~~ subsection (17), or subsection (18) of s. 499.005 is  
5 guilty of a felony of the third degree, punishable as provided  
6 in s. 775.082, s. 775.083, or s. 775.084, or as otherwise  
7 provided in ss. 499.001-499.081.

8 (2) A person is not subject to the penalties of  
9 subsection (1) for having violated any of the provisions of s.  
10 499.005 if he or she establishes a guaranty or undertaking,  
11 which guaranty or undertaking is signed by and contains the  
12 name and address of the person residing in the state, or the  
13 manufacturer, from whom he or she received the article in good  
14 faith, to the effect that such article is not adulterated or  
15 misbranded within the meaning of ss. 499.001-499.081, citing  
16 such sections.

17 (3) A publisher, radio broadcast licensee, or agency  
18 or medium for the dissemination of an advertisement, except  
19 the manufacturer, wholesaler, or seller of the article to  
20 which a false advertisement relates, is not liable under this  
21 section by reason of the dissemination by him or her of such  
22 false advertisement, unless he or she has refused, on the  
23 request of the department, to furnish to the department the  
24 name and post office address of the manufacturer, wholesaler,  
25 seller, or advertising agency that asked him or her to  
26 disseminate such advertisement.

27 Section 7. Paragraph (a) of subsection (1) of section  
28 499.012, Florida Statutes, is amended to read:

29 499.012 Wholesale distribution; definitions; permits;  
30 general requirements.--

31 (1) As used in this section, the term:

1           (a) "Wholesale distribution" means distribution of  
2 prescription drugs to persons other than a consumer or  
3 patient, but does not include:  
4           1. Any of the following activities, which is not a  
5 violation of s. 499.005(22)~~(21)~~ if such activity is conducted  
6 in accordance with s. 499.014:  
7           a. The purchase or other acquisition by a hospital or  
8 other health care entity that is a member of a group  
9 purchasing organization of a prescription drug for its own use  
10 from the group purchasing organization or from other hospitals  
11 or health care entities that are members of that organization.  
12           b. The sale, purchase, or trade of a prescription drug  
13 or an offer to sell, purchase, or trade a prescription drug by  
14 a charitable organization described in s. 501(c)(3) of the  
15 Internal Revenue Code of 1986, as amended and revised, to a  
16 nonprofit affiliate of the organization to the extent  
17 otherwise permitted by law.  
18           c. The sale, purchase, or trade of a prescription drug  
19 or an offer to sell, purchase, or trade a prescription drug  
20 among hospitals or other health care entities that are under  
21 common control. For purposes of this section, "common control"  
22 means the power to direct or cause the direction of the  
23 management and policies of a person or an organization,  
24 whether by ownership of stock, by voting rights, by contract,  
25 or otherwise.  
26           d. The sale, purchase, trade, or other transfer of a  
27 prescription drug from or for any federal, state, or local  
28 government agency or any entity eligible to purchase  
29 prescription drugs at public health services prices pursuant  
30 to Pub. L. No. 102-585, s. 602 to a contract provider or its  
31



1 subcontractor for eligible patients of the agency or entity  
2 under the following conditions:

3 (I) The agency or entity must obtain written  
4 authorization for the sale, purchase, trade, or other transfer  
5 of a prescription drug under this sub-subparagraph from the  
6 Secretary of Health or his or her designee.

7 (II) The contract provider or subcontractor must be  
8 authorized by law to administer or dispense prescription  
9 drugs.

10 (III) In the case of a subcontractor, the agency or  
11 entity must be a party to and execute the subcontract.

12 (IV) A contract provider or subcontractor must  
13 maintain separate and apart from other prescription drug  
14 inventory any prescription drugs of the agency or entity in  
15 its possession.

16 (V) The contract provider and subcontractor must  
17 maintain and produce immediately for inspection all records of  
18 movement or transfer of all the prescription drugs belonging  
19 to the agency or entity, including, but not limited to, the  
20 records of receipt and disposition of prescription drugs. Each  
21 contractor and subcontractor dispensing or administering these  
22 drugs must maintain and produce records documenting the  
23 dispensing or administration. Records that are required to be  
24 maintained include, but are not limited to, a perpetual  
25 inventory itemizing drugs received and drugs dispensed by  
26 prescription number or administered by patient identifier,  
27 which must be submitted to the agency or entity quarterly.

28 (VI) The contract provider or subcontractor may  
29 administer or dispense the prescription drugs only to the  
30 eligible patients of the agency or entity or must return the  
31 prescription drugs for or to the agency or entity. The

1 contract provider or subcontractor must require proof from  
2 each person seeking to fill a prescription or obtain treatment  
3 that the person is an eligible patient of the agency or entity  
4 and must, at a minimum, maintain a copy of this proof as part  
5 of the records of the contractor or subcontractor required  
6 under sub-sub-subparagraph (V).

7 (VII) The prescription drugs transferred pursuant to  
8 this sub-subparagraph may not be billed to Medicaid.

9 (VIII) In addition to the departmental inspection  
10 authority set forth in s. 499.051, the establishment of the  
11 contract provider and subcontractor and all records pertaining  
12 to prescription drugs subject to this sub-subparagraph shall  
13 be subject to inspection by the agency or entity. All records  
14 relating to prescription drugs of a manufacturer under this  
15 sub-subparagraph shall be subject to audit by the manufacturer  
16 of those drugs, without identifying individual patient  
17 information.

18 2. Any of the following activities, which is not a  
19 violation of s. 499.005(22)~~(21)~~ if such activity is conducted  
20 in accordance with rules established by the department:

21 a. The sale, purchase, or trade of a prescription drug  
22 among federal, state, or local government health care entities  
23 that are under common control and are authorized to purchase  
24 such prescription drug.

25 b. The sale, purchase, or trade of a prescription drug  
26 or an offer to sell, purchase, or trade a prescription drug  
27 for emergency medical reasons. For purposes of this  
28 sub-subparagraph, the term "emergency medical reasons"  
29 includes transfers of prescription drugs by a retail pharmacy  
30 to another retail pharmacy to alleviate a temporary shortage.

31

1           c. The transfer of a prescription drug acquired by a  
2 medical director on behalf of a licensed emergency medical  
3 services provider to that emergency medical services provider  
4 and its transport vehicles for use in accordance with the  
5 provider's license under chapter 401.

6           d. The revocation of a sale or the return of a  
7 prescription drug to the person's prescription drug wholesale  
8 supplier.

9           e. The donation of a prescription drug by a health  
10 care entity to a charitable organization that has been granted  
11 an exemption under s. 501(c)(3) of the Internal Revenue Code  
12 of 1986, as amended, and that is authorized to possess  
13 prescription drugs.

14           f. The transfer of a prescription drug by a person  
15 authorized to purchase or receive prescription drugs to a  
16 person licensed or permitted to handle reverse distributions  
17 or destruction under the laws of the jurisdiction in which the  
18 person handling the reverse distribution or destruction  
19 receives the drug.

20           3. The distribution of prescription drug samples by  
21 manufacturers' representatives or distributors'  
22 representatives conducted in accordance with s. 499.028.

23           4. The sale, purchase, or trade of blood and blood  
24 components intended for transfusion. As used in this  
25 subparagraph, the term "blood" means whole blood collected  
26 from a single donor and processed either for transfusion or  
27 further manufacturing, and the term "blood components" means  
28 that part of the blood separated by physical or mechanical  
29 means.

30           5. The lawful dispensing of a prescription drug in  
31 accordance with chapter 465.

1           Section 8. This act shall take effect July 1, 2000.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Provides that it is unlawful to inhale or ingest, or to possess with intent to breathe or inhale, nitrous oxide; to possess, buy, sell, or transfer nitrous oxide; or to sell, deliver, or give nitrous oxide to a person under 18 years of age, except in a specified mixture or for specified purposes. Provides a third degree felony penalty for violation.