



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 215**

August 5, 1997 – Offered by Representative UNDERHEIM.

1 **AN ACT to amend** 346.935 (1), 346.935 (2), 346.935 (3) and 346.935 (4) (b); and
2 **to create** 134.63 and 941.315 of the statutes; **relating to:** nitrous oxide and
3 providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 134.63 of the statutes is created to read:

5 **134.63 Nitrous oxide; restrictions on sales; records of certain sales;**
6 **labeling. (1)** In this section:

7 (a) “Deliver” or “delivery” means the actual, constructive or attempted transfer
8 of nitrous oxide or a nitrous oxide container from one person to another.

9 (b) “Nitrous oxide container” means any compressed gas container that
10 contains food or pharmaceutical grade nitrous oxide as its principal ingredient.

1 **(2)** (a) Except as provided in par. (b), no person who engages in the retail sale
2 of cartridges of nitrous oxide may sell more than 24 cartridges in any single retail
3 transaction.

4 (am) Except as provided in par. (b), no person may, during any consecutive
5 48-hour period, engage in more than one retail purchase of nitrous oxide or any
6 nitrous oxide container.

7 (b) Paragraphs (a) and (am) do not apply to a retail sale to a bakery, restaurant,
8 institutional food distributor or other person engaged in the food service industry if
9 the bakery, restaurant, distributor or other person has an emergency business need
10 for the cartridges.

11 **(3)** (a) Every person in this state who delivers nitrous oxide or any nitrous oxide
12 container to another shall keep a register of all deliveries of nitrous oxide or any
13 nitrous oxide container. The register shall show the name and complete address of
14 the person to whom the nitrous oxide or nitrous oxide container is delivered, the
15 number of cartridges or other containers delivered, the date of delivery and, if the
16 delivery involves a retail sale under sub. (1) (b), the person's Wisconsin income tax
17 identification number and reason for needing more than 24 cartridges of nitrous
18 oxide.

19 (b) A person required to keep a register under par. (a) shall preserve the register
20 on his or her business premises for 2 years in such a manner as to insure permanency
21 and accessibility for inspection and shall permit inspection of the register at all
22 reasonable hours by authorized state and local law enforcement officials.

23 (c) No person required to keep a register under par. (a) may deliver nitrous
24 oxide or any nitrous oxide container to another person unless the person to whom the

1 nitrous oxide or nitrous oxide container is delivered presents an official identification
2 card, as defined in s. 125.085 (1).

3 (d) No person to whom nitrous oxide or any nitrous oxide container is delivered
4 may give a false name or address to a person required to keep a register under par.
5 (a).

6 (4) (a) No person may deliver a cartridge of nitrous oxide to another unless the
7 cartridge has affixed to it a label setting forth in clearly legible and conspicuous form
8 the following warning: "Nitrous oxide cartridges are to be used only for purposes of
9 preparing food. Nitrous oxide cartridges may not be sold to persons under the age
10 of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be
11 dangerous to your health."

12 (b) No person may deliver a cartridge of nitrous oxide to another unless the
13 packaging in which the cartridge is enclosed is marked with a label or other device
14 that indicates the name and business address of the person delivering the cartridge
15 of nitrous oxide.

16 **SECTION 2.** 346.935 (1) of the statutes is amended to read:

17 346.935 (1) No person may drink alcohol beverages or inhale nitrous oxide
18 while he or she is in any motor vehicle when the vehicle is upon a highway.

19 **SECTION 3.** 346.935 (2) of the statutes is amended to read:

20 346.935 (2) No person may possess on his or her person, in a privately owned
21 motor vehicle upon a public highway, any bottle or receptacle containing alcohol
22 beverages or nitrous oxide if the bottle or receptacle has been opened, the seal has
23 been broken or the contents of the bottle or receptacle have been partially removed
24 or released.

25 **SECTION 4.** 346.935 (3) of the statutes is amended to read:

1 346.935 (3) The owner of a privately owned motor vehicle, or the driver of the
2 vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept
3 in the motor vehicle when it is upon a highway any bottle or receptacle containing
4 alcohol beverages or nitrous oxide if the bottle or receptacle has been opened, the seal
5 has been broken or the contents of the bottle or receptacle have been partially
6 removed or released. This subsection does not apply if the bottle or receptacle is kept
7 in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the
8 vehicle not normally occupied by the driver or passengers. A utility compartment or
9 glove compartment is considered to be within the area normally occupied by the
10 driver and passengers.

11 **SECTION 5.** 346.935 (4) (b) of the statutes is amended to read:

12 346.935 (4) (b) This section does not apply to passengers in a limousine or in
13 a motor bus who possess any bottle or receptacle containing alcohol beverages that
14 has been opened, on which the seal has been broken or the contents of which have
15 been partially removed or released if the vehicle is operated by a chauffeur holding
16 a valid license and endorsements authorizing operation of the vehicle as provided in
17 ch. 343 and is in compliance with any local ordinance or regulation adopted under
18 s. 349.24.

19 **SECTION 6.** 941.315 of the statutes is created to read:

20 **941.315 Possession, distribution or delivery of nitrous oxide. (1)** In this
21 section:

22 (a) “Deliver” or “delivery” means the actual, constructive or attempted transfer
23 of nitrous oxide or a substance containing nitrous oxide from one person to another.

24 (b) “Distribute” means to deliver, other than by administering or dispensing.

25 **(2)** Whoever does any of the following is guilty of a Class A misdemeanor:

1 (a) Possesses nitrous oxide or a substance containing nitrous oxide with the
2 intent to inhale the nitrous oxide.

3 (b) Intentionally or otherwise inhales nitrous oxide.

4 **(3)** Whoever does any of the following is guilty of a Class D felony:

5 (a) Distributes or delivers, or possesses with intent to distribute or deliver,
6 nitrous oxide to a person who has not attained the age of 21.

7 (b) Distributes or delivers, or possesses with intent to distribute or deliver,
8 nitrous oxide or a substance containing nitrous oxide to a person aged 21 years or
9 older knowing or having reason to know that the person will use the nitrous oxide
10 in violation of sub. (2).

11 (c) Distributes or delivers to a person aged 21 years or older any object used,
12 designed for use or primarily intended for use in inhaling nitrous oxide at the same
13 time that he or she distributes or delivers nitrous oxide or a substance containing
14 nitrous oxide to the person.

15 **(5)** (a) Subsection (2) does not apply to a person to whom nitrous oxide is
16 administered for the purpose of providing medical or dental care, if the nitrous oxide
17 is administered at the direction or under the supervision of a physician or dentist.

18 (b) Subsection (3) (a) does not apply to the administration of nitrous oxide by
19 a physician or dentist, or by another person at the direction or under the supervision
20 of a physician or dentist, for the purpose of providing medical or dental care.

21 (c) Subsection (3) (c) does not apply to the sale to a physician or dentist of any
22 object used, designed for use or primarily intended for use by a physician or dentist
23 in administering nitrous oxide for the purpose of providing medical or dental care.

24 **SECTION 7. Initial applicability.**

