

State of Wisconsin



1997 Assembly Bill 215

Date of enactment: **July 1, 1998**
Date of publication*: **July 15, 1998**

1997 WISCONSIN ACT 336

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

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

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

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

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

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

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

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

(b) Paragraphs (a) and (am) do not apply to any of the following:

1. A retail sale to a bakery, restaurant, institutional food distributor or other person engaged in the food service industry if the bakery, restaurant, distributor or other person has an emergency business need for the cartridges.

2. Any retail sale to or retail purchase by a hospital, health care clinic or other health care organization that uses nitrous oxide to provide medical or dental care.

3. A retail food establishment, as defined in s. 97.30 (1) (c).

(3) (a) Except as provided in sub. (5), every person in this state who delivers nitrous oxide or any nitrous oxide container to another shall keep a register of all deliveries of nitrous oxide or any nitrous oxide container. The register shall show the name and complete address of the person to whom the nitrous oxide or nitrous oxide container is delivered, the number of cartridges or other containers delivered and the date of delivery.

(b) A person required to keep a register under par. (a) shall preserve the register on his or her business premises for 2 years in such a manner as to ensure permanency and accessibility for inspection and shall permit inspection of the register at all reasonable hours by state and local law enforcement agencies and by any state agency, as defined in s. 16.61 (2) (d).

(c) No person required to keep a register under par. (a) may deliver nitrous oxide or any nitrous oxide container to another person unless the person to whom the nitrous oxide or nitrous oxide container is delivered presents an official identification card, as defined in s. 125.085 (1).

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

(4) (a) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the cartridge bears a label, stamp or tag that sets forth in clearly legible and conspicuous form the following warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be dangerous to your health."

(b) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the packaging in which the cartridge is enclosed is marked with a label or other device that indicates the name and business address of the person delivering the cartridge of nitrous oxide.

(5) Subsections (3) and (4) do not apply to a retail food establishment, as defined in s. 97.30 (1) (c).

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

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

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

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

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

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

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

346.935 (4) (b) This section does not apply to passengers in a limousine or in a motor bus who possess any bot-

tle or receptacle containing alcohol beverages that has been opened, on which the seal has been broken or the contents of which have been partially removed or released if the vehicle is operated by a chauffeur holding a valid license and endorsements authorizing operation of the vehicle as provided in ch. 343 and is in compliance with any local ordinance or regulation adopted under s. 349.24.

SECTION 6. 941.315 of the statutes is created to read:
941.315 Possession, distribution or delivery of nitrous oxide. (1) In this section:

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

(b) "Distribute" means to deliver, other than by administering.

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

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

(b) Intentionally or otherwise inhales nitrous oxide.

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

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

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

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

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

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

(c) Subsection (3) (c) does not apply to the sale to a hospital, health care clinic or other health care organization or to a physician or dentist of any object used, designed for use or primarily intended for use in administering nitrous oxide for the purpose of providing medical or dental care.

1997 Assembly Bill 215

– 3 –

SECTION 7. Initial applicability.

(1) The treatment of section 134.63 (3) (a) and (4) (b) of the statutes first applies to deliveries of nitrous oxide cartridges occurring on the first day of the 7th month beginning after the effective date of this subsection.
