



**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 1997 ASSEMBLY BILL 215**

November 10, 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** 20.115 (8) (gn), 134.63 and 941.315 of the statutes; **relating to:**  
3             nitrous oxide, requiring the exercise of rule-making authority, making an  
4             appropriation and providing penalties.

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

5             **SECTION 1.** 20.115 (8) (gn) of the statutes is created to read:

6             20.115 (8) (gn) *Permits for the retail sale of nitrous oxide containers.* All moneys  
7             received from fees for permits under s. 134.63 (1g) for the costs of issuing the permits  
8             and regulating persons engaged in the retail sale of nitrous oxide containers.

9             **SECTION 2.** 134.63 of the statutes is created to read:

10            **134.63 Nitrous oxide; restrictions on sales; records of certain sales;**  
11            **labeling.** (1) In this section:

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

3 (b) "Department" means the department of agriculture, trade and consumer  
4 protection.

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

8 **(1g)** (a) The department shall issue permits authorizing the sale at retail of  
9 nitrous oxide containers. The department shall promulgate rules establishing all of  
10 the following:

11 1. The requirements that a person must meet to be eligible for a permit, except  
12 that the department may not issue a permit to any individual who has not attained  
13 the age of 21.

14 2. A procedure for applying for a permit.

15 3. A fee for initial issuance of a permit and renewal of a permit.

16 (b) A permit issued by the department under par. (a) shall expire on June 30  
17 of each odd-numbered year.

18 (c) The department shall revoke a permit issued under par. (a) if the person to  
19 whom the permit was issued violates any provision of this section or s. 346.935 or  
20 941.315 or any rule promulgated under this section.

21 **(1r)** (a) No person may sell at retail any nitrous oxide container unless he or  
22 she has a permit issued by the department under sub. (1g).

23 (b) Any person who violates par. (a) shall forfeit not more than \$1,000 for each  
24 offense. Each day of a continuing violation is a separate offense.

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 bears a label, stamp or tag that sets forth in clearly legible and conspicuous  
8 form the following warning: “Nitrous oxide cartridges are to be used only for  
9 purposes of preparing food. Nitrous oxide cartridges may not be sold to persons  
10 under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous  
11 oxide can be 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 3.** 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 4.** 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 5.** 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 6.** 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 7.** 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.

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 8. Initial applicability.**

