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AB-1120 Controlled substances: butane. (2017-2018)

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ENROLLED SEPTEMBER 13, 2017

PASSED IN SENATE SEPTEMBER 06, 2017

PASSED IN ASSEMBLY SEPTEMBER 11, 2017

AMENDED IN SENATE SEPTEMBER 01, 2017

AMENDED IN SENATE JULY 18, 2017

AMENDED IN SENATE JULY 03, 2017

AMENDED IN ASSEMBLY APRIL 25, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

NO. 1120

Introduced by Assembly Members Cooper and Dahle

February 17, 2017

An act to add Section 11107.2 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1120, Cooper. Controlled substances: butane.

Existing law requires a person or entity that sells any quantity of specified substances to record the date of sale, product description, purchaser's identification, and other specified information. Existing law requires the seller to retain this information for a period of 5 years and to present it upon demand by any law enforcement officer or authorized representative of the Attorney General. Existing law requires a person or entity that purchases any quantity of these specified substances to record the date of purchase, product description, and other specified information for a period of 3 years and to present it upon demand by any law enforcement officer or authorized representative of the Attorney General. A violation of these provisions is a crime.

This bill would require a person or entity that sells any quantity of nonodorized butane, as defined, to a customer, as defined, to record specified information about the transaction, including the identity of the customer and to maintain that information for 2 years. The bill would, subject to available funds, require the Department of Justice to create a database of butane purchases and to post a notice on its Internet Web site when the database is operational. The bill would require sellers of nonodorized butane to keep hard copy records of nonodorized butane sales and to electronically submit a report to the Department of Justice upon request.

After the database system described above is operational, this bill would make it unlawful to sell to any one customer more than 600 milliliters of nonodorized butane in a 30-day period or to sell any quantity of nonodorized butane to a customer that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from all sellers in a 30-day period. The bill would authorize a civil penalty to be assessed for the violation of these provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11107.2 is added to the Health and Safety Code, to read:

11107.2. (a) It is unlawful for a manufacturer, wholesaler, reseller, retailer, or other person or entity to sell to any one customer more than 600 milliliters of nonodorized butane in any 30-day period.

(b) (1) It is unlawful for manufacturers, wholesalers, resellers, retailers, or other persons or entities to knowingly or negligently sell to any one customer a quantity of nonodorized butane that would cause the customer to exceed 600 milliliters of nonodorized butane purchased from all sellers in any 30-day period.

(2) The reasonable reliance on information contained in the database described in subdivision (f) is an affirmative defense to the crime in this subdivision.

(c) Subdivisions (a) and (b) shall not be enforced until a database system described in subdivision (f) is operational, as determined by the Department of Justice.

(d) The limitations in subdivisions (a) and (b) shall not apply to any of the following transactions:

(1) Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale.

(2) Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed under Division 10 (commencing with Section 26000) of the Business and Professions Code or a medical cannabis collective or cooperative described in subdivision (b) of Section 11362.775 of this code, operating in compliance with all applicable state licensing requirements and local regulations governing that type of business.

(3) The sale of lighters, torch lighters or other appliances, or lighter refill canisters that contain or use nonodorized butane and contain less than 150 milliliters of nonodorized butane.

(e) For every sale of nonodorized butane not exempted under subdivision (d) the seller shall record and maintain on the premises of the seller for a period of not less than two years after the date of the sale, the following information:

(1) The name, address, and date of birth of the customer, as obtained from his or her valid driver's license or other government-issued photo identification.

(2) The date and time of the sale.

(3) The quantity of butane purchased.

(4) The full name of the person who processed the sale.

(f) (1) To assist manufacturers, wholesalers, resellers, and retailers in their efforts to monitor the sales of nonodorized butane, the Department of Justice shall, contingent upon the availability of adequate funds and in collaboration with stakeholders representing the sellers of nonodorized butane who are required to report and collect information pursuant to this section, develop and maintain an electronic database system for the electronic monitoring of and Internet access to information regarding the amount of butane purchased by individual customers. The database system will allow retailers to automatically synchronize purchases and provide real-time alerts of any purchases in violation of this section, and shall be developed in one of the following three ways:

(A) The database system may be based upon the expansion of an existing electronic database.

(B) The database system may be an existing product, which is available for use by retail sellers of nonodorized butane to customers, as determined by the Department of Justice.

(C) The database system may be a newly created product.

(2) The Department of Justice shall post a notification on its Internet Web site when the database described in paragraph (1) is operational.

(3) All manufacturers, wholesalers, resellers, retailers, or other persons or entities selling nonodorized butane to customers shall keep hard copy records of nonodorized butane sales. Any manufacturer, wholesaler, reseller, retailer, or other person or entity not exempted under subdivision (d) that sells nonodorized butane shall electronically submit a report to the Department of Justice upon request of all sales involving nonodorized butane, including all of the information collected pursuant to subdivision (e).

(g) (1) Any person or business that violates subdivision (a) or (b) is subject to a civil penalty of two thousand five hundred dollars (\$2,500).

(2) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(3) The civil penalty shall be deposited into the General Fund if the action is brought by the Attorney General. If the action is brought by a city attorney, the civil penalty shall be paid to the treasurer of the city in which the judgment is entered. If the action is brought by a county counsel, the civil penalty shall be paid to the treasurer of the county in which the judgment is entered.

(h) As used in this section, the following definitions shall apply:

(1) "Customer" means any person or entity other than those described in paragraphs (1) and (2) of subdivision (d) that purchases or acquires nonodorized butane from a seller during a transaction.

(2) "Nonodorized butane" means iso-butane, n-butane, butane, or a mixture of butane and propane of any power that may also use the words "refined," "pure," "purified," "premium," or "filtered," to describe the butane or butane mixture, which does not contain ethyl mercaptan or a similar odorant.

(3) "Sell" or "sale" means to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration.

(4) "Seller" means any person, business entity, or employee thereof that sells nonodorized butane to any customer within this state.