

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1210 (Kalra)
Version: June 23, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Sodium nitrite

DIGEST

This bill prohibits a seller from selling or offering for sale in this State sodium nitrite at a purity level of over 10 percent without specified labels on the container and shipping packaging; a violation of the labeling requirements is subject to a civil penalty recoverable in an action brought by the Attorney General, a district attorney, a county counsel, or a city attorney.

EXECUTIVE SUMMARY

Sodium nitrite is a chemical compound with an array of uses, from food preparation to industrial manufacturing. Sodium nitrite is also lethal when ingested high doses. Until recently, sodium nitrite compounds in all concentrations were readily available for sale on online marketplaces. Over the past several years, however, there has been a spike in sodium nitrite poisonings, many of which were self-administered and apparently with the intent of committing suicide. Amazon has recently committed to restricting the sale of highly concentrated sodium nitrite to its business-only platform, but consumers can access the same products elsewhere online. And while sodium nitrite poisoning can be counteracted with the administration of intravenous methylene blue, the relative obscurity of sodium nitrite as a poison means that even first responders might not be prepared with the proper treatment.

This bill is intended to provide consumers with information about the dangers of ingesting high-concentrate sodium nitrite and the availability of methylene blue as an antidote. The bill requires any seller who is selling, or offering for sale, a compound that is over 10 percent sodium nitrite in the State to mark the label of the container, and the shipping packaging (if any), with specified warnings. The bill further provides that a violation of the labeling requirement is punishable by a civil penalty of \$10,000 for the first violation and between \$50,000 and \$100,000 for second and subsequent violations;

the civil penalty may be sought in a civil action brought by the Attorney General, a district attorney, a county counsel, or a city counsel.

This bill is sponsored by the author. There is no known opposition. The Senate Business, Professions and Economic Development passed this bill with a vote of 12-0.

PROPOSED CHANGES TO THE LAW

Existing state law:

- 1) Imposes labeling requirements for certain products or products containing certain ingredients sold in the state. (*E.g.*, Health & Saf. Code, §§ 108950-108960.)

Existing federal law:

- 2) Establishes the Federal Food, Drug, and Cosmetic Act (FDCA), which authorizes the Food and Drug Administration (FDA) to oversee and regulate the production, sale, and distribution of food, drugs, medical devices, and cosmetics. (21 U.S.C., ch. 9, §§ 301 et seq.)
- 3) Lists sodium nitrite as a food ingredient sanctioned by the United States Department of Agriculture (USDA) for use in the production of, and as color fixatives and preservative agents for, cured red meat and poultry products. (21 C.F.R. §§ 181.33, 181.34.)
- 4) Authorizes, through regulation, the use of sodium nitrite for various purposes in food preparation and preservation. (*E.g.*, 21 C.F.R. §§ 172.170, 172.175, 172.177, 573.700.)
 - a) When used as a food additive for meat-curing purposes, the sodium nitrite label must contain the name of the additive, a statement of the concentration of the additive, directions for use, and, if the retail package is intended for household use, the statement, "Keep out of the reach of children." (21 C.F.R. §§ 172.170, 172.175.)

This bill:

- 1) Prohibits a person or entity who sells or offers for sale in the state sodium nitrite at a purity level that exceeds 10 percent without the following:
 - a) A clear and conspicuous label on the immediate container of the sodium nitrite stating: "WARNING: LETHAL TO INGEST. If ingested, call for emergency help. The recommended treatment for ingestion of sodium nitrite is intravenous methylene blue."

- b) A clear and conspicuous label on the outside of the shipping package that contains sodium nitrite stating “WARNING: Contains sodium nitrite, which can be fatal if ingested.”
- 2) Provides that a violation of 1) shall be subject to a civil penalty of \$10,000 for the first violation, and a civil penalty of at least \$50,000, but no more than \$100,000, for a second or subsequent violation, which may be recovered in an action brought by the Attorney General, a district attorney, county counsel, or a city attorney.

COMMENTS

1. Author’s statement

According to the author:

The chemical compound Sodium Nitrite is growing in popularity as an accessible and inexpensive option to commit suicide. This is especially a trend among young people, who utilize their parents’ accounts to order the product from online marketplaces. Sodium Nitrite is a fast acting poison, with unclear signs and a general lack of awareness for treatments. AB 1210 would require high concentrations of Sodium Nitrite to be clearly labeled as fatal if ingested and include information about the recommended treatment: intravenous methylene blue. Further, the bill requires shipping packaging to be labeled as containing Sodium Nitrite, fatal if ingested, allowing an opportunity for household members to identify a potential suicide attempt and intervene.

2. What is sodium nitrite?

Sodium nitrite is an inorganic sodium salt that can be used as a food preservative – often for curing meat – as a food antioxidant, and as an antidote to cyanide poisoning.¹ It also has an array of uses that require synthesis or organic materials, such as dyeing textile fabrics, as a laboratory reagent, and in the manufacture of rubber chemicals, as well as certain medical uses.²

Ingesting sodium nitrite in high doses can be fatal.³ And while “[s]odium nitrite poisoning was virtually unheard of five years ago...rates have been increasing.⁴ Many

¹ National Library of Medicine, Compound Summary: Sodium Nitrite, <https://pubchem.ncbi.nlm.nih.gov/compound/Sodium-nitrite>. All links in this analysis are current as of June 30, 2023.

² *Ibid.*

³ National Library of Medicine, Compound Summary: Sodium Nitrite, *supra*.

⁴ Basu, *Suicides Spur Suits on Amazon Sales of Legal-But-Lethal Compound*, Bloomberg Law (Nov. 17, 2022), <https://news.bloomberglaw.com/us-law-week/suicides-spur-suits-on-amazon-sales-of-legal-but-lethal-compound>.

of these poisonings appear to be deliberate acts of suicide: American poison control centers reported a 253 percent increase in self-poisoning with nitrites and a 166 percent increase in fatalities in 2021 as compared to 2018.⁵ Some have posited that the ease of purchasing high-concentration sodium nitrite on platforms like Amazon is responsible for the increase in deaths, especially among minors.⁶

In response, Amazon announced that it has limited its sales of pure sodium nitrite and high-concentration sodium nitrite compounds (10 percent or above) to its Amazon Business marketplace, meaning it is not available to purchasers without a business account.⁷ Concerns remain, however, that lethal doses of sodium nitrite will remain readily available through other platforms. Additionally, the author reports that, because sodium nitrite poisoning is still relatively rare, many people are unaware how to counteract it. Methylene blue administered intravenously can treat the effects of ingesting too much sodium nitrite,⁸ but if first responders arrive without methylene blue, it will likely be too late.

3. This bill imposes certain labeling requirements on sellers of pure sodium nitrite and high-concentration sodium nitrite compounds

This bill is intended to prevent the ingestion of lethal doses of sodium nitrite and provide information about how to counteract its effects. Specifically, this bill provides that no person shall sell or offer for sale in California sodium nitrite at a purity level that exceeds 10 percent without both of the following:

- A clear and conspicuous label on the immediate container of the sodium nitrite stating “WARNING: LETHAL TO INGEST. If ingested, call for emergency help. The recommended treatment for ingestion of sodium nitrite is intravenous methylene blue.”
- A clear and conspicuous label on the outside of the shipping package that contains sodium nitrite stating: “WARNING: Contains sodium nitrite, which can be fatal if ingested.”

These warnings are intended to provide more information to consumers, both about the toxicity of sodium nitrite and the means of counteracting it. The label on the outside package is also intended to inform other people in the household that a poisonous

⁵ America’s Poison Control Centers, ALERT...Poison Control Centers Across the Country Report An Increase in Cases Relating to the Intentional use of Sodium Nitrite (Apr. 29, 2022), <https://www.aapcc.org/news-alerts/12760202>. The use of sodium nitrite as a method of suicide is shared in online communities. (*Id.*)

⁶ Twohey & Dance, *Lawmakers Press Amazon on Sales of Chemical Used in Suicides*, N.Y. Times ((Feb. 4, 2022), available at <https://www.nytimes.com/2022/02/04/technology/amazon-suicide-poison-preservative.html>).

⁷ Basu, *supra*.

⁸ Compound Summary: Sodium Nitrite, *supra*.

substance has been brought to the house; this could give parents or others in a household notice that a recipient has purchased a potentially fatal substance.

The bill's labeling requirement will not affect most consumer curing and food-preserving sodium nitrite compounds, which are generally below the bill's 10 percent concentration threshold. The compounds covered by this bill are generally products with only industrial applications. No seller or online platform has weighed in to suggest that the labeling requirement is overly onerous, and the author is continuing discussion with stakeholders to ensure that the bill strikes the right balance. As set forth below in Part 5, the author has agreed to amendments to clarify that a "violation," for purposes of assessing a civil penalty, is the seller's course of conduct, not each individual unit sold.

4. Constitutional factors

This bill touches on, but does not run afoul of, two federal constitutional questions.

First, because sodium nitrite is regulated at the federal level by the FDA,⁹ any labeling at the state level must be consistent with federal limitations so as not to violate the Supremacy Clause.¹⁰ The FDCA expressly preempts state laws for certain types of food labeling (such as nutrition labels), but does not expressly preempt state safety label requirements.¹¹ Unless the labels were found to somehow thwart the purposes of existing federal requirements – which seems unlikely – it is therefore probable that AB 1210 does not violate the Supremacy Clause.¹²

Second, because the bill does not distinguish between sellers located in California and sellers located outside of California, it is worth mentioning the dormant Commerce Clause. The dormant Commerce Clause is a corollary of the Commerce Clause, which grants Congress the authority to regulate interstate commerce: "the Clause also contains a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject."¹³ The United States Supreme Court recently affirmed that the dormant Commerce Clause generally does not prohibit a state from regulating commerce within its borders, even if the prohibition affects out-of-state sellers, unless the prohibition acts to discriminate against out-of-state interests for the benefit of in-state commerce.¹⁴ Even nondiscriminatory laws can violate the dormant Commerce Clause when they "substantially burden" interstate commerce, but the Court has approved far more

⁹ 21 U.S.C., ch. 9, §§ 301 et seq.; 21 C.F.R. §§ 172.170, 172.175.

¹⁰ U.S. Const., art IV, par. 2.

¹¹ 21 U.S.C. §§ 341, 343, 343-1.

¹² E.g., *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372-373.

¹³ *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, 1152 (internal quotation marks and alterations omitted).

¹⁴ *Id.* at pp. 1152-1153.

onerous sales requirements than the ones set forth in this bill.¹⁵ Seeing as AB 1210 applies equally to all sellers and does not appear to substantially overburden interstate commerce, there is no cause for concern here.

5. Amendments

As noted above, the author has agreed to amend the bill to clarify that, when assessing the civil penalty, a “violation” is the seller’s course of conduct in violation the statute (e.g., failing to add the warning on the shipping container), to clarify that the civil penalty should not be assessed against each individual unit that violates the statute.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1109 (Connolly, 2023) prohibits, beginning July 1, 2024, a person, retailer, or online marketplace from selling sodium nitrite to a person under 18 years of age and sodium nitrite in concentrations greater than 10 percent to all persons, as specified. AB 1109 is pending on the Senate Floor.

Prior Legislation: None known.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 12, Noes 0)
Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)

¹⁵ *Id.* at pp.1162-1163.