

AMENDED IN SENATE AUGUST 23, 2004  
AMENDED IN SENATE AUGUST 17, 2004  
AMENDED IN SENATE JULY 7, 2004  
AMENDED IN SENATE JUNE 21, 2004  
AMENDED IN SENATE JUNE 3, 2004  
AMENDED IN SENATE JANUARY 6, 2004  
AMENDED IN SENATE AUGUST 25, 2003  
AMENDED IN SENATE AUGUST 18, 2003  
AMENDED IN SENATE JULY 22, 2003  
AMENDED IN SENATE JULY 8, 2003  
AMENDED IN ASSEMBLY APRIL 29, 2003  
AMENDED IN ASSEMBLY MARCH 26, 2003  
AMENDED IN ASSEMBLY MARCH 12, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 262**

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**Introduced by Assembly Member Chan  
(Coauthors: Assembly Members Hancock, Jackson, Steinberg,  
and Vargas)**

February 4, 2003

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An act to add Part 2.7 (commencing with Section 57) to Division 1 of the Civil Code, relating to personal information, *and making an appropriation therefor.*

## LEGISLATIVE COUNSEL'S DIGEST

AB 262, as amended, Chan. Pharmacies: physician prescribing data.

Existing law, the Pharmacy Law, provides for the licensure of pharmacists and regulates the practice of pharmacy as a profession. Violations of the act are punishable as either a misdemeanor or an infraction, as specified.

This bill would, operative upon specified funding for, and findings by, the Medical Board of California, enact the Physician Prescribing Practices Act, regulating the sale, release to a 3rd party, or exchange for remuneration by a pharmacist or by a 3rd-party recipient, of physician prescribing data, as defined, regarding a prescription written by a physician combined with personal information about the physician or his or her prescribing practices. The bill would require the Medical Board of California to maintain a "Do Not Use" list in which physicians licensed in this state may register, as specified, for these purposes. The bill would authorize the Medical Board of California to charge reasonable fees for listing a physician's name, and for access to information on the list. The bill would require the start-up costs of the bill to be paid for by a loan from the Medical Board Contingent Fund, a continuously appropriated fund, which would be repaid out of the fees authorized by the bill. The bill would authorize the board to contract for the creation and maintenance of the "Do Not Use" list, as specified. The bill would specify that it shall cease to be operative 5 years after it becomes operative.

The bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1 SECTION 1. Part 2.7 (commencing with Section 57) is added  
2 to Division 1 of the Civil Code, to read:

3  
4 PART 2.7. PHYSICIAN PRESCRIBING PRACTICES ACT

5  
6 57. This part shall be known and may be cited as the  
7 “Physician Prescribing Practices Act.”

8 58. ~~(a)~~ *For purposes of this part:*

9 (a) “Data vendor” means any California or out-of-state entity  
10 that acquires physician prescription data from pharmacies or other  
11 sources and sells or transfers that data directly, or through  
12 intermediaries, to pharmaceutical companies or pharmaceutical  
13 benefits managers for any commercial purpose and whose primary  
14 business is the collection of this data.

15 (b) “Licensee” means a person described in Section 4036 or  
16 4037 of the Business and Professions Code.

17 (c) “Physician” means a person described in Section 2041 of  
18 the Business and Professions Code.

19 (d) “Physician prescribing data” means information that sets  
20 forth a prescription written on or after the operative date of this part  
21 by a physician in combination with any data that individually  
22 identifies the physician, including a unique identifier assigned for  
23 tracking purposes, telephone number, e-mail address, medical  
24 identification number, business or home address, or any other  
25 information that can reasonably be used to identify the physician  
26 or track the prescribing habits of the physician.

27 (e) *“Release to a third party” or “release” does not include*  
28 *communication or use of physician prescribing data among*  
29 *covered entities that participate in an organized health care*  
30 *arrangement, as defined in 45 C.F.R. 160.103.*

31 59. A person or entity, including a licensee, may sell, release  
32 to a third party, or exchange for remuneration, any physician  
33 prescribing data only as provided in this part.

34 60. A person or entity, including a licensee, may sell, release  
35 to a third party, or exchange for remuneration, physician  
36 prescribing data to a *data* vendor, only if all of the following  
37 apply:



1 (a) The data vendor voluntarily assumes a duty to review and  
2 comply with the “Do Not Use” list described in Section 71 at least  
3 once every six months and owes this duty to a licensee who sells,  
4 releases to a third party, or exchanges for remuneration, physician  
5 prescribing data, and every physician who voluntarily joins the list  
6 described in this part.

7 (b) The data vendor enters into a contract with the licensee or  
8 the licensee’s agent or subcontractor not to sell, release to a third  
9 party, or exchange for remuneration, physician prescribing data of  
10 any physician included on the list described in Section 71 that does  
11 all of the following:

12 (1) Requires the data vendor to be subject to the jurisdiction of  
13 this state for enforcement by private parties and by the Attorney  
14 General of this state for a violation of this part.

15 (2) If the data vendor is not a California corporation, or is not  
16 engaged in business activity in California, includes a provision  
17 authorizing the Attorney General of the state of incorporation, on  
18 its own or in conjunction with the Attorney General of this state,  
19 to prosecute violations of this part, as well as providing for private  
20 enforcement in the state of incorporation.

21 (3) Provides that the data vendor agrees to comply with this  
22 part.

23 (c) The data vendor is not licensed in California or any other  
24 state or country to manufacture or distribute dangerous drugs, as  
25 defined in Section 4022 of the Business and Professions Code.

26 61. (a) Nothing in this part may be construed to limit or  
27 restrict the release of physician prescribing data necessary for any  
28 local, state, or federal governmental oversight or regulatory  
29 activity, including, but not limited to, the release of physician  
30 prescribing data to a local, state, or federal law enforcement or  
31 public health authority in furtherance of its regulatory activity.

32 (b) *Nothing in this part shall be construed to limit or restrict the*  
33 *transfer, sale, or release of physician prescribing data, including*  
34 *data from physicians on the “Do Not Use” list, obtained from a*  
35 *licensee or data vendor to a vendor whose use of the data is limited*  
36 *to making that data available exclusively to local, state, or federal*  
37 *governmental law enforcement and regulatory agencies for*  
38 *legitimate law enforcement purposes.*

39 62. Nothing in this part may be construed to limit or restrict  
40 the release of physician prescribing data necessary for the



1 processing of a health care claim. Any person or entity that  
2 receives physician prescribing data pursuant to this section may  
3 sell, release to a third party, or exchange for remuneration that data  
4 only if the entity agrees to review and comply with the “Do Not  
5 Use” list described in Section 71 at least once every six months,  
6 and acknowledges that it owes this duty to every physician who  
7 voluntarily joins the list as described in this part.

8 63. Nothing in this part is intended to prohibit or limit an  
9 individual patient or a physician from releasing any identifiable  
10 information relating to a prescription that the patient received, or  
11 that the physician wrote, that is not otherwise restricted or  
12 prohibited by law.

13 64. Nothing in this part is intended to limit or restrict the  
14 otherwise lawful activities of a licensee.

15 65. (a) Nothing in this part may be construed to limit or  
16 restrict the release of physician prescribing data to any of the  
17 following:

18 (1) A licensed health care professional, if the release is directly  
19 related to providing health care to a patient.

20 (2) A health insurer or disability insurer, health care service  
21 plan, pharmacy benefit manager, employer-sponsored health  
22 benefit plan, or their contractors, if the data is directly related to  
23 administering *or monitoring the use of* a health care benefit.

24 (3) An authorized operator of a program related to the  
25 treatment of chronic and seriously debilitating or life-threatening  
26 conditions, as defined in subdivisions (d) and (e) of Section  
27 1367.21 of the Health and Safety Code.

28 (4) An employee benefit plan or any other person or private  
29 entity responsible for paying for health care services rendered to  
30 the patient, if the physician prescribing data is reasonably  
31 necessary to complete or verify a health care transaction related to  
32 the prescription information sought to be disclosed.

33 (5) Any health care, health care service plan, contractor, or  
34 other health care professional or facility exclusively for purposes  
35 of diagnosis or treatment of a patient.

36 (6) Use by a health care service plan or health insurer or  
37 disability insurer ~~or its contractor for quality review purposes as~~  
38 *as permitted or required by Section 1367.01 or 1370 of the Health*  
39 *and Safety Code or Section 10123.135 or subdivision (d) of*  
40 *Section 10133 of the Insurance Code.*



1 (b) Any entity receiving physician prescribing data pursuant to  
2 paragraph (2) of subdivision (a) is authorized to release or sell the  
3 ~~data only pursuant to the restrictions set forth in Section 60. Any~~  
4 ~~other disclosure of the data, which is not otherwise lawful, is~~  
5 ~~prohibited.~~ data if:

6 (1) *Each entity voluntarily assumes a duty to review and*  
7 *comply with the “Do Not Use” list described in Section 71 at least*  
8 *once every six months, and owes this duty to every physician who*  
9 *voluntarily joins the list described in this part.*

10 (2) (A) *If the entity is a California corporation or is engaged in*  
11 *business activity in California, it is presumed to have consented to*  
12 *the jurisdiction of this state for enforcement by private parties and*  
13 *by the Attorney General of this state for a violation of this part.*

14 (B) *If the entity is not a California corporation, or is not*  
15 *engaged in business activity in California, but receives prescriber*  
16 *data of a physician licensed in this state, the entity agrees to*  
17 *authorize the Attorney General of the state of incorporation, on its*  
18 *own or in conjunction with the Attorney General of this state, to*  
19 *prosecute violations of this part, as well as provide for private*  
20 *enforcement in this state and in the state of incorporation.*

21 (c) *Nothing in this part is intended to limit or restrict the release*  
22 *of prescriber data for purposes of otherwise lawful*  
23 *pharmacovigilance programs.*

24 (d) *Nothing in this part is intended to limit or restrict the release*  
25 *of prescriber data of injectable drugs administered in a physician’s*  
26 *office.*

27 66. Nothing in this part may be construed to prohibit the  
28 release of aggregate prescription data to any individual or entity,  
29 provided that data does not include identifiable physician  
30 prescribing data as described in this part.

31 67. (a) Nothing in this part may be construed to prohibit the  
32 release of physician prescribing data if it is solely intended to be  
33 used for clinical trials or established research projects conducted  
34 in accordance with protocols, guidelines, or standards recognized  
35 by the federal Health and Human Services Agency, the federal  
36 Food and Drug Administration, the National Institutes for Health,  
37 the National Cancer Institute, or the Centers for Disease Control.  
38 ~~The data acquired for clinical trials or established research projects~~  
39 ~~shall not be used for any other purpose except as described in this~~  
40 ~~section.~~



1 (b) Any entity receiving physician prescribing data pursuant to  
2 this section may not use the data for any other purpose.

3 68. Nothing in this part may be construed to limit or restrict  
4 the release of physician prescribing data for the purposes of  
5 providing the physician with information regarding action by the  
6 state or by the federal Food and Drug Administration limiting or  
7 disallowing the sale or use of a specific drug, or to provide the  
8 physician with information regarding adverse events related to a  
9 specific drug or medical device.

10 69. Nothing in this part shall prohibit the otherwise lawful use  
11 or release of physician prescribing data for litigation purposes.

12 70. Any physician included on the list described in Section 71  
13 may enforce the provisions of this part, on his or her own behalf,  
14 if his or her physician prescribing data has been used, sold, or  
15 otherwise released in violation with this part.

16 71. (a) The Medical Board of California shall maintain a “Do  
17 Not Use” list on which physicians licensed in this state may  
18 register. Registration on the “Do Not Use” list is intended to limit  
19 the release of physician prescribing data pursuant to this article.  
20 The Medical Board of California shall publish on its Web site an  
21 electronic process *not connected with the license renewal process*  
22 to allow physicians in this state to place their names on the list. The  
23 Medical Board of California may contract with a third party for the  
24 creation or maintenance of the list.

25 (b) The Medical Board of California may charge a physician a  
26 reasonable fee for the listing of a physician’s name on the “Do Not  
27 Use” list, and may charge a person or entity a reasonable fee for  
28 the right to access the information contained on the list.

29 (c) The Medical Board of California may promulgate all  
30 necessary regulations to carry out the requirements of this part.

31 (d) Registration on the list established pursuant to this section  
32 shall last for no less than one year, and no more than two years, as  
33 determined by the Medical Board of California.

34 72. The Medical Board of California shall pay for all start-up  
35 costs of implementing this part by a loan from the Contingent Fund  
36 of the Medical Board of California. The loan, the terms of which  
37 shall be set by the board, shall be paid back from the fees  
38 authorized by this part. If the board contracts for the creation and  
39 maintenance of the “Do Not Use” list by a third party, the board



1 may authorize that third party to assess and collect fees authorized  
2 pursuant to Section 71.

3 ~~SEC. 2. This act shall be operative only if, on or after January~~  
4 ~~1, 2006, there is an appropriation from the Contingent Fund of the~~  
5 ~~Medical Board of California in the annual Budget Act to fund the~~  
6 ~~activities required of the board by this act, and sufficient hiring~~  
7 ~~authority, as determined by the board, is granted to the board to~~  
8 ~~provide staffing to implement this act, in which event this act shall~~  
9 ~~cease to be operative five years after its operative date.~~

10 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
11 ~~Section 6 of Article XIII B of the California Constitution because~~  
12 ~~the only costs that may be incurred by a local agency or school~~  
13 ~~district are the result of a program for which legislative authority~~  
14 ~~was requested by that local agency or school district, within the~~  
15 ~~meaning of Section 17556 of the Government Code and Section~~  
16 ~~6 of Article XIII B of the California Constitution.~~

17 *SEC. 2. No reimbursement is required by this act pursuant to*  
18 *Section 6 of Article XIII B of the California Constitution because*  
19 *the only costs that may be incurred by a local agency or school*  
20 *district will be incurred because this act creates a new crime or*  
21 *infraction, eliminates a crime or infraction, or changes the penalty*  
22 *for a crime or infraction, within the meaning of Section 17556 of*  
23 *the Government Code, or changes the definition of a crime within*  
24 *the meaning of Section 6 of Article XIII B of the California*  
25 *Constitution.*

26 *SEC. 3. This act shall be operative only if, on or after January*  
27 *1, 2006, there is an appropriation from the Contingent Fund of the*  
28 *Medical Board of California in the annual Budget Act to fund the*  
29 *activities required of the board by this act, and sufficient hiring*  
30 *authority, as determined by the board, is granted to the board to*  
31 *provide staffing to implement this act, in which event this act shall*  
32 *cease to be operative five years after its operative date.*

