

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 283

Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Maze)
(Coauthors: Senators Alquist and Margett)

February 9, 2005

An act to add Section 11100.01 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 283, as amended, Koretz. Ephedrine and pseudoephedrine: retail sale.

(1) Under existing law, a retailer who makes an over-the-counter retail sale of ephedrine or pseudoephedrine is generally subject to a 3 package per transaction limitation or 9 gram per transaction limitation. Any violation of this requirement is a crime, punishable as specified.

This bill would provide that the dispensing, sale, or distribution at retail of any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or any derivative of ephedrine or pseudoephedrine shall be subject to specified additional requirements. The retailer would be required to store and display the product in a locked cabinet or area, as specified, and the transaction would be required to be made by a retailer or employee of a retailer who meets specified requirements. ~~Before distributing or selling any product to a purchaser, a retailer or the employee of a retailer would be required to request government issued photo identification from the purchaser and to obtain specified information~~

~~to be reported to the Department of Justice, as specified; the bill would prohibit the information obtained from being provided to any person or entity, except as specified. A violation of any of these provisions would be a misdemeanor, punishable as specified, except that a retail clerk who fails to request photo identification or obtain the required information~~ *comply with these provisions* would not be subject to any civil, criminal, or other penalty, unless the clerk is a willful participant in an ongoing criminal conspiracy to violate these provisions. By creating new crimes, this bill would impose a state-mandated local program upon local governments.

(2) 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: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 11100.01 is added to the Health and
- 2 Safety Code, to read:
- 3 11100.01. (a) In addition to any requirement specified in
- 4 Section 11100, the dispensing, sale, or distribution at retail of any
- 5 compound, mixture, preparation, or product that contains any
- 6 detectable quantity of ephedrine, pseudoephedrine, or any
- 7 derivative of ephedrine or pseudoephedrine, or any detectable
- 8 quantity of any salt, optical isomer, or salt of an optical isomer of
- 9 ephedrine, pseudoephedrine, or any derivative of ephedrine or
- 10 pseudoephedrine, shall be subject to the following requirements:
- 11 (1) Any product specified in subdivision (a) shall be stored or
- 12 displayed by a retailer in a locked cabinet or locked area in such
- 13 a manner that the product is accessible to the public only with the
- 14 assistance of the retailer or employee of the retailer. The retailer
- 15 or employee of the retailer shall at all times act to prevent the
- 16 theft or diversion of the product.
- 17 (2) The dispensing, sale, or distribution at retail of any
- 18 product specified in subdivision (a) shall be made only by a
- 19 retailer or employee of a retailer who is trained in the legal

1 requirements set forth in this section and who shall at all times
2 act to prevent the theft or diversion of the product ~~and the~~
3 ~~unlawful sharing of information obtained pursuant to subdivision~~
4 ~~(b):~~

5 ~~(b) Before distributing or selling any product specified in~~
6 ~~subdivision (a) to a purchaser, a retailer or employee of a retailer~~
7 ~~shall request government issued photo identification from the~~
8 ~~purchaser and shall obtain the following information to be~~
9 ~~reported to the Department of Justice in a frequency and format~~
10 ~~specified by the Department of Justice:~~

11 ~~(1) Date of purchase.~~

12 ~~(2) Name and amount of product purchased.~~

13 ~~(3) Government issuer of the photo identification.~~

14 ~~(4) Identification number.~~

15 ~~(5) Purchaser's full name as it appears on the photo~~
16 ~~identification.~~

17 ~~(6) Purchaser's signature.~~

18 ~~(c) Information obtained pursuant to subdivision (b) shall only~~
19 ~~be provided to appropriate state, local, or federal person or public~~
20 ~~agency with respect to a disciplinary, civil, or criminal action~~
21 ~~related to a violation of this section or to the unlawful~~
22 ~~manufacture of methamphetamine or any other controlled~~
23 ~~substance.~~

24 ~~(d).~~

25 ~~(b) This section shall not apply to any product specified in~~
26 ~~subdivision (a) in liquid, liquid capsule, or dissolvable strip form~~
27 ~~in which ephedrine, pseudoephedrine, or any derivative of~~
28 ~~ephedrine or pseudoephedrine is the active ingredient.~~

29 ~~(e)~~

30 ~~(c) (1) The Department of Justice may adopt rules and~~
31 ~~regulations in accordance with Chapter 3.5 (commencing with~~
32 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the~~
33 ~~Government Code that exempt a substance from the application~~
34 ~~of subdivision (a) if the department finds that the substance is not~~
35 ~~used in the unlawful manufacture of methamphetamine or any~~
36 ~~other controlled substance.~~

37 ~~(2) The Department of Justice shall, upon satisfactory~~
38 ~~application by the manufacturer of a drug product to the~~
39 ~~department, exempt any product the department determines to~~
40 ~~have been formulated in such a way as to effectively prevent the~~

1 conversion of any active ingredient in the product into
2 methamphetamine or any other controlled substance.

3 ~~(f)~~

4 ~~(d)~~ Except as provided in subdivision ~~(g)~~ (e), any person who
5 violates this section shall be punished as follows:

6 (1) A first violation of this section is a misdemeanor.

7 (2) Any person who has previously been convicted of a
8 violation of this section or Section 11100 shall, upon a
9 subsequent conviction thereof, be punished by imprisonment in a
10 county jail not exceeding one year, by a fine not exceeding ten
11 thousand dollars (\$10,000), or by both the fine and
12 imprisonment.

13 ~~(g)~~

14 ~~(e)~~ (1) Notwithstanding subdivision ~~(f)~~ and ~~except as~~
15 ~~provided in paragraph (2) (d)~~, a retail clerk who fails to request
16 ~~photo identification or obtain the information specified in~~ *comply*
17 *with the provisions of* subdivision ~~(b)~~ (a) shall not be guilty of a
18 crime pursuant to subdivision ~~(f)~~ (d), shall not be subject to any
19 civil penalty, and shall not be subject to any disciplinary action
20 or discharge by his or her employer.

21 (2) This subdivision shall not apply to a retail clerk who is a
22 willful participant in an ongoing criminal conspiracy to violate
23 this section.

24 ~~(h)~~

25 (f) It is the intent of the Legislature that this section and
26 Section 11100 shall preempt all local ordinances or regulations
27 governing the sale by a retail distributor of over-the-counter
28 products containing pseudoephedrine.

29 SEC. 2. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the
34 penalty for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition of a
36 crime within the meaning of Section 6 of Article XIII B of the
37 California Constitution.