

ASSEMBLY BILL

No. 67

Introduced by Assembly Member Nava

December 10, 2008

An act to add Section 4052.6 to the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 67, as introduced, Nava. Pharmacy Patient Protection Act of 2008.

Existing law, the Unruh Civil Rights Act, provides that all persons are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation and are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments.

Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy in the Department of Consumer Affairs. Existing law prohibits pharmacists and other health care licentiates from obstructing a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient, except if the licentiate refuses on ethical, moral, or religious grounds and otherwise, as specified. Existing law provides that a violation of this prohibition constitutes unprofessional conduct and shall subject the pharmacist or other health care licentiate to disciplinary or administrative action by his or her licensing agency. Existing law authorizes the Board of Pharmacy to impose disciplinary

actions including suspension and revocation of a pharmacist’s license, as specified.

This bill would establish the Pharmacy Patient Protection Act of 2008, which would require pharmacists to dispense all lawfully obtained prescriptions when the prescribed medication is in stock without regard to any ethical, moral, or religious objections.

This bill would provide that a pharmacist’s failure to dispense a prescription as required would be grounds for revocation of the pharmacist’s license.

Existing law requires pharmacies to post prominently a notice describing a patient’s rights to obtain a prescription drug or device without obstruction by a pharmacist with exceptions and providing additional information, as specified. Existing law permits a pharmacy to provide the patient a written receipt containing the information required on the notice in lieu of posting a notice.

This bill would require a pharmacy to prominently display a sign explaining the patient’s rights established by this bill, including the telephone number and Internet Web site for patients to utilize in filing a complaint.

This bill would make specified findings and declarations of the Legislature.

Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, this bill would impose a state-mandated local program.

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. This act shall be known, and may be cited, as the
- 2 Pharmacy Patient Protection Act of 2008.
- 3 SEC. 2. (a) The Legislature finds and declares that the
- 4 California Supreme Court held in *Benitez v. North Coast Women’s*
- 5 *Care Medical Group* (2008) 44 Cal. 4th 1145, that the physicians’
- 6 constitutional rights to free speech and free exercise of religion

1 afforded by the First Amendment to the United States Constitution
2 did not exempt the physicians from complying with the Unruh
3 Civil Rights Act (Sections 51 to 53, inclusive, of Civil Code. The
4 court further held that the liberty of conscience provided in Section
5 4 of Article I of the California Constitution was insufficient to
6 allow the physicians to engage in sexual orientation discrimination.
7 The court held that the Unruh Civil Rights Act furthered a
8 compelling interest in ensuring full and equal access to medical
9 treatment irrespective of sexual orientation, and there were no less
10 restrictive means to achieve that goal.

11 (b) The Legislature finds and declares that the state has a
12 compelling interest in ensuring full and equal access to dispensed
13 prescriptions and that interference with full and equal access to
14 dispensed prescriptions is inconsistent with the safety of the state.

15 (c) The Legislature intends to apply the principles of this case
16 law to dispensing of prescriptions by pharmacists to further ensure
17 all patients full and equal access to medical treatment irrespective
18 of sexual orientation, or otherwise.

19 SEC. 3. Section 4052.6 is added to the Business and Professions
20 Code, to read:

21 4052.6. (a) Notwithstanding paragraph (3) of subdivision (b)
22 of Section 733, a pharmacist shall dispense each lawfully obtained
23 prescription presented by a patient provided that the prescribed
24 medication is in stock at the pharmacy in which the pharmacist is
25 practicing. A pharmacist shall dispense prescriptions irrespective
26 of the pharmacist's ethical, moral, or religious objections. The
27 liberty of conscience, within the meaning of Section 4 of Article
28 I of the California Constitution, shall not be lawful grounds for a
29 pharmacist to fail to dispense a prescription.

30 (b) If a pharmacist fails to dispense a prescription pursuant to
31 subdivision (a), the patient named on the prescription, or his or
32 her duly authorized representative, may file a complaint with the
33 board in connection with the pharmacist's failure to dispense the
34 prescription.

35 (c) A violation of subdivision (a) shall be grounds for revocation
36 of a pharmacist's license by the board.

37 (d) Every pharmacy that is open to the public shall prominently
38 display a notice explaining the patients' rights established pursuant
39 to this section, including the telephone number and Internet Web
40 site of the board for patients to utilize in filing a complaint. The

1 format and wording of the notice shall be adopted by the board by
2 regulation. The notice required by this subdivision shall be in
3 addition to any notice requirement imposed by subdivision (a) of
4 Section 4122.

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.