

AMENDED IN SENATE JANUARY 19, 2010

AMENDED IN SENATE AUGUST 18, 2009

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY MAY 7, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1455

Introduced by Assembly Member Hill

(Principal coauthor: Senator Leno)

**(Coauthors: Assembly Members Anderson, Gilmore, Hagman,
Jones, Ma, Miller, and Nielsen Nielsen, and Salas)**

~~(Coauthor: Senator Benoit)~~ *(Coauthors: Senators Cox and Huff)*

February 27, 2009

An act to amend, repeal, and add Section 11100 of, and to add and repeal Section 11100.02 of, the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1455, as amended, Hill. Ephedrine: retail sale.

(1) Existing law classifies controlled substances into 5 schedules, with the most restrictive limitations placed on controlled substances classified in Schedule I, and the least restrictive limitations placed on

controlled substances classified in Schedule V. A controlled substance in any of the schedules may be possessed or dispensed only upon a lawful prescription, as specified. Existing law does not classify ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within any of these 5 schedules, but provides that it is a crime, punishable as specified, for a person in this state who engages in specified transactions involving those drugs to fail to submit a report to the Department of Justice of all of those transactions, or to fail to submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice, as specified. Existing law prohibits the sale of more than 3 packages or 9 grams of a nonprescription product containing ephedrine or the other drugs, as specified.

This bill would instead provide that it is a misdemeanor, punishable as specified, for any retail distributor, except pursuant to a valid prescription from a licensed practitioner with prescriptive authority, to sell or distribute to a person specified amounts of nonprescription products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within specified time limits, to sell or distribute any of those substances to a person whose information has generated an alert, or, except under specified conditions, to sell or distribute to any purchaser a nonprescription product containing any amount of those substances. The bill would contain provisions requiring the secure storage of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and providing for the creation of an electronic authorization and monitoring system for the collection of, access to, and sharing of information regarding these transactions, as specified. *The bill would provide that the information in the system may not be used for any purpose other than to meet the requirements of, or comply with, this act or a certain federal act, as specified. The bill would specify legislative findings, declarations, and intent.* The bill's provisions would remain in effect only until January 1, 2017. By creating a new crime, this bill would impose a state-mandated local program.

(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.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 of the Health and Safety Code is
2 amended to read:

3 11100. (a) Any manufacturer, wholesaler, retailer, or other
4 person or entity in this state that sells, transfers, or otherwise
5 furnishes any of the following substances to any person or entity
6 in this state or any other state shall submit a report to the
7 Department of Justice of all of those transactions:

- 8 (1) Phenyl-2-propanone.
- 9 (2) Methylamine.
- 10 (3) Ethylamine.
- 11 (4) D-lysergic acid.
- 12 (5) Ergotamine tartrate.
- 13 (6) Diethyl malonate.
- 14 (7) Malonic acid.
- 15 (8) Ethyl malonate.
- 16 (9) Barbituric acid.
- 17 (10) Piperidine.
- 18 (11) N-acetylanthranilic acid.
- 19 (12) Pyrrolidine.
- 20 (13) Phenylacetic acid.
- 21 (14) Anthranilic acid.
- 22 (15) Morpholine.
- 23 (16) Ephedrine.
- 24 (17) Pseudoephedrine.
- 25 (18) Norpseudoephedrine.
- 26 (19) Phenylpropanolamine.
- 27 (20) Propionic anhydride.
- 28 (21) Isosafrole.
- 29 (22) Safrole.
- 30 (23) Piperonal.
- 31 (24) Thionylchloride.
- 32 (25) Benzyl cyanide.
- 33 (26) Ergonovine maleate.

- 1 (27) N-methylephedrine.
- 2 (28) N-ethylephedrine.
- 3 (29) N-methylpseudoephedrine.
- 4 (30) N-ethylpseudoephedrine.
- 5 (31) Chloroephedrine.
- 6 (32) Chloropseudoephedrine.
- 7 (33) Hydriodic acid.
- 8 (34) Gamma-butyrolactone, including butyrolactone;
- 9 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 10 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 11 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 12 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 13 with Chemical Abstract Service number (96-48-0).
- 14 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 15 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 16 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 17 1,4-diol with Chemical Abstract Service number (110-63-4).
- 18 (36) Red phosphorus, including white phosphorus,
- 19 hypophosphorous acid and its salts, ammonium hypophosphite,
- 20 calcium hypophosphite, iron hypophosphite, potassium
- 21 hypophosphite, manganese hypophosphite, magnesium
- 22 hypophosphite, sodium hypophosphite, and phosphorous acid and
- 23 its salts.
- 24 (37) Iodine or tincture of iodine.
- 25 (38) Any of the substances listed by the Department of Justice
- 26 in regulations promulgated pursuant to subdivision (b).
- 27 (b) The Department of Justice may adopt rules and regulations
- 28 in accordance with Chapter 3.5 (commencing with Section 11340)
- 29 of Part 1 of Division 3 of Title 2 of the Government Code that add
- 30 substances to subdivision (a) if the substance is a precursor to a
- 31 controlled substance and delete substances from subdivision (a).
- 32 However, no regulation adding or deleting a substance shall have
- 33 any effect beyond March 1 of the year following the calendar year
- 34 during which the regulation was adopted.
- 35 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
- 36 person or entity in this state, prior to selling, transferring, or
- 37 otherwise furnishing any substance specified in subdivision (a) to
- 38 any person or business entity in this state or any other state, shall
- 39 require (i) a letter of authorization from that person or business
- 40 entity that includes the currently valid business license number or

federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, “proper identification” for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller’s permit identification number; city or county business license number; license issued by the State Department of Public Health; registration number issued by the ~~Federal~~ *federal* Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the Department of Justice; driver’s license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which

1 includes the identification information specified in subdivision
2 (c), to the Department of Justice. The Department of Justice may
3 authorize the submission of the reports on a monthly basis with
4 respect to repeated, regular transactions between the furnisher and
5 the recipient involving the substance or substances if the
6 Department of Justice determines that a pattern of regular supply
7 of the substance or substances exists between the manufacturer,
8 wholesaler, retailer, or other person or entity that sells, transfers,
9 or otherwise furnishes the substance or substances and the recipient
10 of the substance or substances, and the recipient has established a
11 record of utilization of the substance or substances for lawful
12 purposes.

13 (2) The person selling, transferring, or otherwise furnishing any
14 substance specified in subdivision (a) shall affix his or her signature
15 or otherwise identify himself or herself as a witness to the
16 identification of the purchaser or purchasing individual, and shall,
17 if a common carrier is used, maintain a manifest of the delivery
18 to the purchaser for three years.

19 (e) This section shall not apply to any of the following:

20 (1) Any pharmacist or other authorized person who sells or
21 furnishes a substance upon the prescription of a physician, dentist,
22 podiatrist, or veterinarian.

23 (2) Any physician, dentist, podiatrist, or veterinarian who
24 administers or furnishes a substance to his or her patients.

25 (3) Any manufacturer or wholesaler licensed by the California
26 State Board of Pharmacy that sells, transfers, or otherwise furnishes
27 a substance to a licensed pharmacy, physician, dentist, podiatrist,
28 or veterinarian, or a retail distributor as defined in subdivision (h),
29 provided that the manufacturer or wholesaler submits records of
30 any suspicious sales or transfers as determined by the Department
31 of Justice.

32 (4) Any analytical research facility that is registered with the
33 federal Drug Enforcement Administration of the United States
34 Department of Justice.

35 (5) A state-licensed health care facility that administers or
36 furnishes a substance to its patients.

37 (6) (A) Any sale, transfer, furnishing, or receipt of any product
38 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
39 or phenylpropanolamine and which is lawfully sold, transferred,
40 or furnished over the counter without a prescription pursuant to

1 the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
2 seq.) or regulations adopted thereunder. However, this section
3 shall apply to preparations in solid or liquid dosage form, except
4 pediatric liquid forms, as defined, containing ephedrine,
5 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
6 where the individual transaction involves more than three packages
7 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine.

9 (B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or
10 phenylpropanolamine product subsequently removed from
11 exemption pursuant to Section 814 of Title 21 of the United States
12 Code shall similarly no longer be exempt from any state reporting
13 or permitting requirement, unless otherwise reinstated pursuant to
14 subdivision (d) or (e) of Section 814 of Title 21 of the United States
15 Code as an exempt product.

16 (7) The sale, transfer, furnishing, or receipt of any betadine or
17 povidone solution with an iodine content not exceeding 1 percent
18 in containers of eight ounces or less, or any tincture of iodine not
19 exceeding 2 percent in containers of one ounce or less, that is sold
20 over the counter.

21 (8) Any transfer of a substance specified in subdivision (a) for
22 purposes of lawful disposal as waste.

23 (f) (1) Any person specified in subdivision (a) or (d) who does
24 not submit a report as required by that subdivision or who
25 knowingly submits a report with false or fictitious information
26 shall be punished by imprisonment in a county jail not exceeding
27 six months, by a fine not exceeding five thousand dollars (\$5,000),
28 or by both the fine and imprisonment.

29 (2) Any person specified in subdivision (a) or (d) who has
30 previously been convicted of a violation of paragraph (1) shall,
31 upon a subsequent conviction thereof, be punished by
32 imprisonment in the state prison, or by imprisonment in a county
33 jail not exceeding one year, by a fine not exceeding one hundred
34 thousand dollars (\$100,000), or by both the fine and imprisonment.

35 (g) (1) Except as otherwise provided in subparagraph (A) of
36 paragraph (6) of subdivision (e), it is unlawful for any
37 manufacturer, wholesaler, retailer, or other person to sell, transfer,
38 or otherwise furnish a substance specified in subdivision (a) to a
39 person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(h) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 2. Section 11100 is added to the Health and Safety Code, to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

- (1) Phenyl-2-propanone.
- (2) Methylamine.
- (3) Ethylamine.
- (4) D-lysergic acid.
- (5) Ergotamine tartrate.
- (6) Diethyl malonate.
- (7) Malonic acid.
- (8) Ethyl malonate.
- (9) Barbituric acid.
- (10) Piperidine.
- (11) N-acetylanthranilic acid.
- (12) Pyrrolidine.
- (13) Phenylacetic acid.
- (14) Anthranilic acid.
- (15) Morpholine.
- (16) Ephedrine.
- (17) Pseudoephedrine.
- (18) Norpseudoephedrine.
- (19) Phenylpropanolamine.
- (20) Propionic anhydride.
- (21) Isosafrole.

- 1 (22) Safrole.
- 2 (23) Piperonal.
- 3 (24) Thionylchloride.
- 4 (25) Benzyl cyanide.
- 5 (26) Ergonovine maleate.
- 6 (27) N-methylephedrine.
- 7 (28) N-ethylephedrine.
- 8 (29) N-methylpseudoephedrine.
- 9 (30) N-ethylpseudoephedrine.
- 10 (31) Chloroephedrine.
- 11 (32) Chloropseudoephedrine.
- 12 (33) Hydriodic acid.
- 13 (34) Gamma-butyrolactone, including butyrolactone;
14 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
15 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
16 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
17 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
18 with Chemical Abstract Service number (96-48-0).
- 19 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
20 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
21 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
22 1,4-diol with Chemical Abstract Service number (110-63-4).
- 23 (36) Red phosphorus, including white phosphorus,
24 hypophosphorous acid and its salts, ammonium hypophosphite,
25 calcium hypophosphite, iron hypophosphite, potassium
26 hypophosphite, manganese hypophosphite, magnesium
27 hypophosphite, sodium hypophosphite, and phosphorous acid and
28 its salts.
- 29 (37) Iodine or tincture of iodine.
- 30 (38) Any of the substances listed by the Department of Justice
31 in regulations promulgated pursuant to subdivision (b).
- 32 (b) The Department of Justice may adopt rules and regulations
33 in accordance with Chapter 3.5 (commencing with Section 11340)
34 of Part 1 of Division 3 of Title 2 of the Government Code that add
35 substances to subdivision (a) if the substance is a precursor to a
36 controlled substance and delete substances from subdivision (a).
37 However, no regulation adding or deleting a substance shall have
38 any effect beyond March 1 of the year following the calendar year
39 during which the regulation was adopted.

1 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
2 person or entity in this state, prior to selling, transferring, or
3 otherwise furnishing any substance specified in subdivision (a) to
4 any person or business entity in this state or any other state, shall
5 require (i) a letter of authorization from that person or business
6 entity that includes the currently valid business license number or
7 federal Drug Enforcement Administration (DEA) registration
8 number, the address of the business, and a full description of how
9 the substance is to be used, and (ii) proper identification from the
10 purchaser. The manufacturer, wholesaler, retailer, or other person
11 or entity in this state shall retain this information in a readily
12 available manner for three years. The requirement for a full
13 description of how the substance is to be used does not require the
14 person or business entity to reveal their chemical processes that
15 are typically considered trade secrets and proprietary information.

16 (B) For the purposes of this paragraph, “proper identification”
17 for in-state or out-of-state purchasers includes two or more of the
18 following: federal tax identification number; seller’s permit
19 identification number; city or county business license number;
20 license issued by the State Department of Public Health;
21 registration number issued by the ~~Federal~~ *federal* Drug
22 Enforcement Administration; precursor business permit number
23 issued by the Bureau of Narcotic Enforcement of the Department
24 of Justice; driver’s license; or other identification issued by a state.

25 (2) (A) Any manufacturer, wholesaler, retailer, or other person
26 or entity in this state that exports a substance specified in
27 subdivision (a) to any person or business entity located in a foreign
28 country shall, on or before the date of exportation, submit to the
29 Department of Justice a notification of that transaction, which
30 notification shall include the name and quantity of the substance
31 to be exported and the name, address, and, if assigned by the
32 foreign country or subdivision thereof, business identification
33 number of the person or business entity located in a foreign country
34 importing the substance.

35 (B) The department may authorize the submission of the
36 notification on a monthly basis with respect to repeated, regular
37 transactions between an exporter and an importer involving a
38 substance specified in subdivision (a), if the department determines
39 that a pattern of regular supply of the substance exists between the

1 exporter and importer and that the importer has established a record
2 of utilization of the substance for lawful purposes.

3 (d) (1) Any manufacturer, wholesaler, retailer, or other person
4 or entity in this state that sells, transfers, or otherwise furnishes a
5 substance specified in subdivision (a) to a person or business entity
6 in this state or any other state shall, not less than 21 days prior to
7 delivery of the substance, submit a report of the transaction, which
8 includes the identification information specified in subdivision
9 (c), to the Department of Justice. The Department of Justice may
10 authorize the submission of the reports on a monthly basis with
11 respect to repeated, regular transactions between the furnisher and
12 the recipient involving the substance or substances if the
13 Department of Justice determines that a pattern of regular supply
14 of the substance or substances exists between the manufacturer,
15 wholesaler, retailer, or other person or entity that sells, transfers,
16 or otherwise furnishes the substance or substances and the recipient
17 of the substance or substances, and the recipient has established a
18 record of utilization of the substance or substances for lawful
19 purposes.

20 (2) The person selling, transferring, or otherwise furnishing any
21 substance specified in subdivision (a) shall affix his or her signature
22 or otherwise identify himself or herself as a witness to the
23 identification of the purchaser or purchasing individual, and shall,
24 if a common carrier is used, maintain a manifest of the delivery
25 to the purchaser for three years.

26 (e) This section shall not apply to any of the following:

27 (1) Any pharmacist or other authorized person who sells or
28 furnishes a substance upon the prescription of a physician, dentist,
29 podiatrist, or veterinarian.

30 (2) Any physician, dentist, podiatrist, or veterinarian who
31 administers or furnishes a substance to his or her patients.

32 (3) Any manufacturer or wholesaler licensed by the California
33 State Board of Pharmacy that sells, transfers, or otherwise furnishes
34 a substance to a licensed pharmacy, physician, dentist, podiatrist,
35 or veterinarian, or a retail distributor as defined in subdivision (h),
36 provided that the manufacturer or wholesaler submits records of
37 any suspicious sales or transfers as determined by the Department
38 of Justice.

1 (4) Any analytical research facility that is registered with the
2 federal Drug Enforcement Administration of the United States
3 Department of Justice.

4 (5) A state-licensed health care facility that administers or
5 furnishes a substance to its patients.

6 (6) (A) Any sale, transfer, furnishing, or receipt of any product
7 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine and which is lawfully sold, transferred,
9 or furnished over the counter without a prescription pursuant to
10 the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
11 seq.) or regulations adopted thereunder. However, this section
12 shall apply to preparations in solid or liquid dosage form, except
13 pediatric liquid forms, as defined, containing ephedrine,
14 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
15 where the individual transaction involves more than three packages
16 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
17 or phenylpropanolamine.

18 (B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or
19 phenylpropanolamine product subsequently removed from
20 exemption pursuant to Section 814 of Title 21 of the United States
21 Code shall similarly no longer be exempt from any state reporting
22 or permitting requirement, unless otherwise reinstated pursuant to
23 subdivision (d) or (e) of Section 814 of Title 21 of the United States
24 Code as an exempt product.

25 (7) The sale, transfer, furnishing, or receipt of any betadine or
26 povidone solution with an iodine content not exceeding 1 percent
27 in containers of eight ounces or less, or any tincture of iodine not
28 exceeding 2 percent in containers of one ounce or less, that is sold
29 over the counter.

30 (8) Any transfer of a substance specified in subdivision (a) for
31 purposes of lawful disposal as waste.

32 (f) (1) Any person specified in subdivision (a) or (d) who does
33 not submit a report as required by that subdivision or who
34 knowingly submits a report with false or fictitious information
35 shall be punished by imprisonment in a county jail not exceeding
36 six months, by a fine not exceeding five thousand dollars (\$5,000),
37 or by both the fine and imprisonment.

38 (2) Any person specified in subdivision (a) or (d) who has
39 previously been convicted of a violation of paragraph (1) shall,
40 upon a subsequent conviction thereof, be punished by

1 imprisonment in the state prison, or by imprisonment in a county
2 jail not exceeding one year, by a fine not exceeding one hundred
3 thousand dollars (\$100,000), or by both the fine and imprisonment.

4 (g) (1) Except as otherwise provided in subparagraph (A) of
5 paragraph (6) of subdivision (e), it is unlawful for any
6 manufacturer, wholesaler, retailer, or other person to sell, transfer,
7 or otherwise furnish a substance specified in subdivision (a) to a
8 person under 18 years of age.

9 (2) Except as otherwise provided in subparagraph (A) of
10 paragraph (6) of subdivision (e), it is unlawful for any person under
11 18 years of age to possess a substance specified in subdivision (a).

12 (3) Notwithstanding any other law, it is unlawful for any retail
13 distributor to (A) sell in a single transaction more than three
14 packages of a product that he or she knows to contain ephedrine,
15 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
16 or (B) knowingly sell more than nine grams of ephedrine,
17 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
18 other than pediatric liquids as defined. Except as otherwise
19 provided in this section, the three package per transaction limitation
20 or nine gram per transaction limitation imposed by this paragraph
21 shall apply to any product that is lawfully sold, transferred, or
22 furnished over the counter without a prescription pursuant to the
23 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.),
24 or regulations adopted thereunder, unless exempted from the
25 requirements of the federal Controlled Substances Act by the
26 federal Drug Enforcement Administration pursuant to Section 814
27 of Title 21 of the United States Code.

28 (4) (A) A first violation of this subdivision is a misdemeanor.

29 (B) Any person who has previously been convicted of a violation
30 of this subdivision shall, upon a subsequent conviction thereof, be
31 punished by imprisonment in a county jail not exceeding one year,
32 by a fine not exceeding ten thousand dollars (\$10,000), or by both
33 the fine and imprisonment.

34 (h) For the purposes of this article, the following terms have
35 the following meanings:

36 (1) "Drug store" is any entity described in Code 5912 of the
37 Standard Industrial Classification (SIC) Manual published by the
38 United States Office of Management and Budget, 1987 edition.

39 (2) "General merchandise store" is any entity described in Codes
40 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial

1 Classification (SIC) Manual published by the United States Office
2 of Management and Budget, 1987 edition.

3 (3) “Grocery store” is any entity described in Code 5411 of the
4 Standard Industrial Classification (SIC) Manual published by the
5 United States Office of Management and Budget, 1987 edition.

6 (4) “Pediatric liquid” means a nonencapsulated liquid whose
7 unit measure according to product labeling is stated in milligrams,
8 ounces, or other similar measure. In no instance shall the dosage
9 units exceed 15 milligrams of phenylpropanolamine or
10 pseudoephedrine per five milliliters of liquid product, except for
11 liquid products primarily intended for administration to children
12 under two years of age for which the recommended dosage unit
13 does not exceed two milliliters and the total package content does
14 not exceed one fluid ounce.

15 (5) “Retail distributor” means a grocery store, general
16 merchandise store, drugstore, or other related entity, the activities
17 of which, as a distributor of ephedrine, pseudoephedrine,
18 norpseudoephedrine, or phenylpropanolamine products, are limited
19 exclusively to the sale of ephedrine, pseudoephedrine,
20 norpseudoephedrine, or phenylpropanolamine products for personal
21 use both in number of sales and volume of sales, either directly to
22 walk-in customers or in face-to-face transactions by direct sales.
23 “Retail distributor” includes an entity that makes a direct sale, but
24 does not include the parent company of that entity if the company
25 is not involved in direct sales regulated by this article.

26 (6) “Sale for personal use” means the sale in a single transaction
27 to an individual customer for a legitimate medical use of a product
28 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
29 phenylpropanolamine in dosages at or below that specified in
30 paragraph (3) of subdivision (g). “Sale for personal use” also
31 includes the sale of those products to employers to be dispensed
32 to employees from ~~first-aid~~ *first aid* kits or medicine chests.

33 (i) It is the intent of the Legislature that this section shall
34 preempt all local ordinances or regulations governing the sale by
35 a retail distributor of over-the-counter products containing
36 ephedrine, pseudoephedrine, norpseudoephedrine, or
37 phenylpropanolamine.

38 (j) This section shall become operative on January 1, 2017.

39 SEC. 3. Section 11100.02 is added to the Health and Safety
40 Code, to read:

11100.02. (a) Notwithstanding any other law, it is unlawful for any retail distributor to knowingly do the following, except pursuant to a valid prescription from a licensed practitioner with prescriptive authority:

(1) To sell or distribute to the same purchaser within any 30-day period more than nine grams, or within any ~~24-hour period~~ day more than 3.6 grams, of ephedrine base, pseudoephedrine base, norpseudoephedrine base, or phenylpropanolamine base contained in any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(2) To sell or distribute any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine to a person whose information has generated an alert as described in paragraph (3) of subdivision ~~(e)~~ (d) regarding that sale.

(3) To sell or distribute to any purchaser a nonprescription product containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, except under the following conditions:

~~(A) The purchaser shall produce a valid federal or state-issued identification or document relating to identification that is acceptable for purposes of Section 274a.2(b)(1)(v)(A) or Section 274a.2(b)(1)(v)(B) of Title 8 of the Code of Federal Regulations, in effect on or after March 9, 2006.~~

(A) The purchaser shall produce valid government-issued photo identification.

(B) The purchaser shall sign a written or electronic log showing the following:

- (i) The date of the transaction.
- (ii) The identification number presented.
- (iii) The agency issuing the identification and the type of identification issued.
- (iv) The name, date of birth, and address of the purchaser.
- (v) The amount of ephedrine base, pseudoephedrine base, norpseudoephedrine base, or phenylpropanolamine base contained in the material, compound, mixture, or preparation sold.

1 (b) The retail distributor shall store any product containing any
2 amount of ephedrine, pseudoephedrine, norpseudoephedrine, or
3 phenylpropanolamine either ~~behind the counter~~ *behind the counter*
4 or in a locked cabinet so that the customer does not have access
5 to the product.

6 (c) (1) To facilitate the monitoring of the sales of
7 nonprescription products containing ephedrine, pseudoephedrine,
8 norpseudoephedrine, or phenylpropanolamine, the retail distributor
9 shall record all of the following information at the point of sale
10 regarding the proposed transaction *for the purpose of complying*
11 *with this section or the federal Combat Methamphetamine*
12 *Epidemic Act, or any regulation adopted pursuant to this section*
13 *or that act, and for no other purpose:*

14 (A) The date of the transaction.

15 (B) The identification number of the purchaser, issuing agency
16 of the identification, and the type of identification used.

17 (C) The name, date of birth, and address of the purchaser
18 verified through a photo identification of the purchaser.

19 (D) The name, quantity of packages, and total gram weight of
20 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
21 or phenylpropanolamine base contained in a product or products
22 purchased, received, or otherwise acquired.

23 (E) The name or initials of the person making the sale.

24 (2) Upon recording the transaction information, the retail
25 distributor shall transmit the information immediately to the
26 electronic authorization and monitoring system for purposes of
27 determining whether the proposed sale would violate this section
28 and therefore may not proceed. *The transaction information shall*
29 *not be accessed or used by the retail distributor for any purpose*
30 *other than to meet the requirements set forth in this section or to*
31 *comply with the provisions of the federal Combat*
32 *Methamphetamine Epidemic Act, or any regulation adopted*
33 *pursuant to this section or that act.*

34 (3) This subdivision shall not be construed to require a retail
35 distributor to maintain state-required records relating to the sale
36 of products containing ephedrine, pseudoephedrine,
37 norpseudoephedrine, or phenylpropanolamine in a separate location
38 or log from records required by federal law to be kept with respect
39 to those products.

(d) (1) The Bureau of Narcotic Enforcement shall enter into a memorandum of understanding (MOU) with the National Association of Drug Diversion Investigators or other comparable organization to provide retail distributors of products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in this state ~~with access~~ *access without charge* to an electronic authorization and monitoring system for the sale of those products.

(2) The system shall allow retail distributors of products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine to enter into the database the information specified in subdivision (d) regarding the proposed sale of those products.

(3) The system shall be capable of providing the retail distributor with an immediate real-time alert any time any provision of this section is being violated by a proposed sale.

(4) Neither the bureau nor any state agency shall bear any cost for the development, installation, or maintenance of the system.

(5) The state shall impose no fee on a retail distributor or manufacturer to defray administrative or other costs for oversight or use of the system.

(6) The MOU shall state that no party to the MOU nor any entity under contract to provide the electronic authorization and monitoring system shall be authorized to use the information contained in the system for any purpose other than those set forth in this section, the federal Combat Methamphetamine Epidemic Act, or any regulation adopted pursuant to this section or that act. However, the system operator shall be authorized to analyze the information for the sole purpose of assessing and improving the performance and efficacy of the system.

(e) The bureau is authorized to enter into a cooperative endeavor, MOU, contract, or any other agreement with any other law enforcement agency in order to provide instant access to the information collected under this section regarding the sale of products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(f) This section shall not apply to a health care practitioner with prescriptive authority who is currently licensed in this state.

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

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

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Bureau" means Bureau of Narcotic Enforcement of the Department of Justice.

(2) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in amounts at or below that specified in subdivision (a). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from ~~first-aid~~ *first aid* kits or medicine chests.

(i) The provisions of this section shall not become operative unless all of the following conditions have been met:

1 (1) The Bureau of Narcotic Enforcement enters into a MOU
2 with the National Association of Drug Diversion Investigators or
3 other comparable organization, as set forth in subdivision (d).

4 (2) The Bureau of Narcotic Enforcement determines that a
5 substantial number of retail distributors have access to the
6 electronic authorization and monitoring system pursuant to the
7 provisions of the MOU.

8 (3) A period of 180 days has expired from the date the bureau
9 made the determination specified in paragraph (2).

10 (j) It is the intent of the Legislature that this section shall
11 preempt all local ordinances or regulations governing the sale by
12 a retail distributor of over-the-counter products containing
13 ephedrine, pseudoephedrine, norpseudoephedrine, or
14 phenylpropanolamine.

15 (k) This section shall remain in effect only until January 1, 2017,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2017, deletes or extends that date.

18 *SEC. 4. (a) The Legislature finds and declares all of the*
19 *following:*

20 *(1) The National Association of Drug Diversion Investigators*
21 *(NADDI) is the only organization prepared to implement, and*
22 *capable of implementing, a statewide electronic tracking system*
23 *for retail sales of medicines containing pseudoephedrine as soon*
24 *as would be mandated by this act.*

25 *(2) Only NADDI is positioned to implement the system as*
26 *specified in this act because manufacturers of these medicines*
27 *have entered into a contractual relationship with NADDI to provide*
28 *access to the system, without charge, to all retailers and to*
29 *appropriate state and local law enforcement agencies.*

30 *(b) It is the intent of the Legislature in enacting this act to*
31 *mandate a statewide electronic tracking system for retail sales of*
32 *medicines containing pseudoephedrine without incurring cost to*
33 *the state to run the system because manufacturers of*
34 *pseudoephedrine products will fund the system.*

35 ~~SEC. 4.~~

36 *SEC. 5. No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution because*
38 *the only costs that may be incurred by a local agency or school*
39 *district will be incurred because this act creates a new crime or*
40 *infraction, eliminates a crime or infraction, or changes the penalty*

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 ~~SEC. 5.~~

6 *SEC. 6.* This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning of Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

10 In order to effectively and expeditiously control the distribution
11 of ephedrine and like substances in order to reduce their use in the
12 manufacture of methamphetamine, it is necessary that this act go
13 into immediate effect.