

AMENDED IN SENATE MAY 5, 2009

SENATE BILL

No. 484

**Introduced by Senator Wright
(Coauthor: Senator Florez)**

February 26, 2009

An act to amend Sections 11058, 11100, and 11106 of, *and to add Section 11375.5 to*, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 484, as amended, Wright. Ephedrine and pseudoephedrine.

(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, and specified related drugs 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.

This bill would classify ephedrine, pseudoephedrine, and specified related drugs as Schedule V controlled substances, able to be possessed or dispensed only upon a lawful prescription. *The bill would provide that any person who obtains any of these drugs without a prescription, as specified, shall be guilty of an infraction or a misdemeanor.* The bill

would make conforming changes to related provisions. By creating new crimes or revising the penalties for existing crimes involving ephedrine, pseudoephedrine, and specified related drugs, ~~involving ephedrine, pseudoephedrine, and specified related drugs~~, 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.

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 11058 of the Health and Safety Code is
2 amended to read:

3 11058. (a) The controlled substances listed in this section are
4 included in Schedule V.

5 (b) Schedule V shall consist of the drugs and other substances,
6 by whatever official name, common or usual name, chemical name,
7 or brand name designated, listed in this section.

8 (c) Narcotic drugs containing nonnarcotic active medicinal
9 ingredients. Any compound, mixture, or preparation containing
10 any of the following narcotic drugs, or their salts calculated as the
11 free anhydrous base or alkaloid, in limited quantities as set forth
12 below, which shall include one or more nonnarcotic active
13 medicinal ingredients in sufficient proportion to confer upon the
14 compound, mixture, or preparation valuable medicinal qualities
15 other than those possessed by narcotic drugs alone:

16 (1) Not more than 200 milligrams of codeine per 100 milliliters
17 or per 100 grams.

18 (2) Not more than 100 milligrams of dihydrocodeine per 100
19 milliliters or per 100 grams.

20 (3) Not more than 100 milligrams of ethylmorphine per 100
21 milliliters or per 100 grams.

22 (4) Not more than 2.5 milligrams of diphenoxylate and not less
23 than 25 micrograms of atropine sulfate per dosage unit.

24 (5) Not more than 100 milligrams of opium per 100 milliliters
25 or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~(7) Products containing ephedrine, pseudoephedrine, norpseudoephedrine, phenylpropanolamine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine, or chloropseudoephedrine, except for pediatric liquid forms as specified in subdivision (h) of Section 11100.~~

(d) Buprenorphine.

(e) Products containing ephedrine, pseudoephedrine, norpseudoephedrine, phenylpropanolamine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine, or chloropseudoephedrine, except for pediatric liquid forms as specified in subdivision (h) of Section 11100.

SEC. 2. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer or wholesaler 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.
- (20) Propionic anhydride.
- (21) Isosafrole.
- (22) Safrole.

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

1 and (B) proper identification from the purchaser. The manufacturer
2 or wholesaler in this state shall retain this information in a readily
3 available manner for three years. The requirement for a full
4 description of how the substance is to be used does not require the
5 person or business entity to reveal their chemical processes that
6 are typically considered trade secrets and proprietary information.

7 (B) For the purposes of this paragraph, “proper identification”
8 for in-state or out-of-state purchasers includes two or more of the
9 following: federal tax identification number; seller’s permit
10 identification number; city or county business license number;
11 license issued by the California Department of Health Services;
12 registration number issued by the Federal Drug Enforcement
13 Administration; precursor business permit number issued by the
14 Bureau of Narcotic Enforcement of the California Department of
15 Justice; driver’s license; or other identification issued by a state.

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

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

33 (d) (1) Any manufacturer, wholesaler, retailer, or other person
34 or entity in this state that sells, transfers, or otherwise furnishes a
35 substance specified in subdivision (a) to a person or business entity
36 in this state or any other state shall, not less than 21 days prior to
37 delivery of the substance, submit a report of the transaction, which
38 includes the identification information specified in subdivision
39 (c), to the Department of Justice. The Department of Justice may
40 authorize the submission of the reports on a monthly basis with

1 respect to repeated, regular transactions between the furnisher and
2 the recipient involving the substance or substances if the
3 Department of Justice determines that a pattern of regular supply
4 of the substance or substances exists between the manufacturer
5 or, wholesaler, retailer, or other person or entity that sells, transfers,
6 or otherwise furnishes the substance or substances and the recipient
7 of the substance or substances, and the recipient has established a
8 record of utilization of the substance or substances for lawful
9 purposes.

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

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

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

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

22 (3) Any analytical research facility that is registered with the
23 federal Drug Enforcement Administration of the United States
24 Department of Justice.

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

27 (5) Any sale, transfer, furnishing, or receipt of a product
28 specified in ~~paragraph (7) of subdivision (c)~~ *subdivision (e)* of
29 Section 11058 pursuant to prescription; shall not be subject to *the*
30 reporting or permitting requirements of this section, unless a
31 product is subsequently removed from exemption pursuant to
32 Section 814 of Title 21 of the United States Code, in which case
33 the product shall similarly no longer be exempt from any state
34 reporting or permitting requirement unless otherwise reinstated
35 pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the
36 United States Code as an exempt product.

37 (6) The sale, transfer, furnishing, or receipt of any betadine or
38 povidone solution with an iodine content not exceeding 1 percent
39 in containers of eight ounces or less, or any tincture of iodine not

1 exceeding 2 percent in containers of one ounce or less, that is sold
2 over the counter.

3 (7) Any transfer of a substance specified in subdivision (a) for
4 purposes of lawful disposal as waste.

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

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

17 (g) (1) Except as otherwise provided, it is unlawful for any
18 manufacturer or wholesaler to sell, transfer, or otherwise furnish
19 a substance specified in subdivision (a) to a person under 18 years
20 of age.

21 (2) Except as otherwise provided in subparagraph (A) of
22 paragraph (6) of subdivision (e), it is unlawful for any person under
23 18 years of age to possess a substance specified in subdivision (a).

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

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

30 (h) For the purposes of this article, the following terms have
31 the following meanings:

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

35 (2) "General merchandise store" is any entity described in Codes
36 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial
37 Classification (SIC) Manual published by the United States Office
38 of Management and Budget, 1987 edition.

(3) “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.

(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of any product specified in ~~paragraph (7) of subdivision (c)~~ *subdivision (e)* of Section 11058 per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) “Retail distributor” means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of any product specified in ~~paragraph (7) of subdivision (c)~~ *subdivision (e)* of Section 11058 are limited to the sale of those products upon prescription only, except for pediatric liquids, 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.

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

SEC. 3. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) (A) Any manufacturer or wholesaler in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for

1 a permit for a period not to exceed six months from the listing date
2 of the substance.

3 (B) An intracompany transfer does not require a permit if the
4 transferor is a permittee. Transfers between company partners or
5 between a company and an analytical laboratory do not require a
6 permit if the transferor is a permittee and a report as to the nature
7 and extent of the transfer is made to the Department of Justice
8 pursuant to Section 11100 or 11100.1.

9 (C) This paragraph shall not apply to any manufacturer,
10 wholesaler, or wholesale distributor who is licensed by the
11 California State Board of Pharmacy and also registered with the
12 federal Drug Enforcement Administration of the United States
13 Department of Justice; any pharmacist or other authorized person
14 who sells or furnishes a substance upon the prescription of a
15 physician, dentist, podiatrist, or veterinarian; any state-licensed
16 health care facility, physician, dentist, podiatrist, veterinarian, or
17 veterinary food-animal drug retailer licensed by the California
18 State Board of Pharmacy that administers or furnishes a substance
19 to a patient; or any analytical research facility that is registered
20 with the federal Drug Enforcement Administration of the United
21 States Department of Justice.

22 (D) This paragraph shall not apply to the sale, transfer,
23 furnishing, or receipt of any betadine or povidone solution with
24 an iodine content not exceeding 1 percent in containers of eight
25 ounces or less, or any tincture of iodine not exceeding 2 percent
26 in containers of one ounce or less, that is sold over the counter.

27 ~~(3)~~

28 (2) A permit shall be required for the sale, transfer, furnishing,
29 or obtaining of preparations in solid or liquid dosage form
30 containing any product as specified in ~~paragraph (7) of subdivision~~
31 ~~(e) subdivision (e)~~ of Section 11058.

32 (b) (1) The department shall provide application forms, which
33 are to be completed under penalty of perjury, in order to obtain
34 information relating to the identity of any applicant applying for
35 a permit, including, but not limited to, the business name of the
36 applicant or the individual name, and if a corporate entity, the
37 names of its board of directors, the business in which the applicant
38 is engaged, the business address of the applicant, a full description
39 of any substance to be sold, transferred, or otherwise furnished or
40 to be obtained, the specific purpose for the use, sale, or transfer of

1 those substances specified in subdivision (a) of Section 11100, the
2 training, experience, or education relating to this use, and any
3 additional information requested by the department relating to
4 possible grounds for denial as set forth in this section, or by
5 applicable regulations adopted by the department.

6 (2) The requirement for the specific purpose for the use, sale,
7 or transfer of those substances specified in subdivision (a) of
8 Section 11100 does not require applicants or permittees to reveal
9 their chemical processes that are typically considered trade secrets
10 and proprietary business information.

11 (c) Applicants and permittees shall authorize the department,
12 or any of its duly authorized representatives, as a condition of
13 being permitted, to make any examination of the books and records
14 of any applicant, permittee, or other person, or visit and inspect
15 the business premises of any applicant or permittee during normal
16 business hours, as deemed necessary to enforce this chapter.

17 (d) An application may be denied, or a permit may be revoked
18 or suspended, for reasons which include, but are not limited to,
19 the following:

20 (1) Materially falsifying an application for a permit or an
21 application for the renewal of a permit.

22 (2) If any individual owner, manager, agent, representative, or
23 employee for the applicant who has direct access, management,
24 or control for any substance listed under subdivision (a) of Section
25 11100, is or has been convicted of a misdemeanor or felony relating
26 to any of the substances listed under subdivision (a) of Section
27 11100, any misdemeanor drug-related offense, or any felony under
28 the laws of this state or the United States.

29 (3) Failure to maintain effective controls against the diversion
30 of precursors to unauthorized persons or entities.

31 (4) Failure to comply with this article or any regulations of the
32 department adopted thereunder.

33 (5) Failure to provide the department, or any duly authorized
34 federal or state official, with access to any place for which a permit
35 has been issued, or for which an application for a permit has been
36 submitted, in the course of conducting a site investigation,
37 inspection, or audit; or failure to promptly produce for the official
38 conducting the site investigation, inspection, or audit any book,
39 record, or document requested by the official.

1 (6) Failure to provide adequate documentation of a legitimate
2 business purpose involving the applicant's or permittee's use of
3 any substance listed in subdivision (a) of Section 11100.

4 (7) Commission of any act which would demonstrate actual or
5 potential unfitness to hold a permit in light of the public safety and
6 welfare, which act is substantially related to the qualifications,
7 functions, or duties of a permitholder.

8 (8) If any individual owner, manager, agent, representative, or
9 employee for the applicant who has direct access, management,
10 or control for any substance listed under subdivision (a) of Section
11 11100, willfully violates or has been convicted of violating, any
12 federal, state, or local criminal statute, rule, or ordinance regulating
13 the manufacture, maintenance, disposal, sale, transfer, or furnishing
14 of any of those substances.

15 (e) Notwithstanding any other provision of law, an investigation
16 of an individual applicant's qualifications, or the qualifications of
17 an applicant's owner, manager, agent, representative, or employee
18 who has direct access, management, or control of any substance
19 listed under subdivision (a) of Section 11100, for a permit may
20 include review of his or her summary criminal history information
21 pursuant to Sections 11105 and 13300 of the Penal Code, including,
22 but not limited to, records of convictions, regardless of whether
23 those convictions have been expunged pursuant to Section 1203.4
24 of the Penal Code, and any arrests pending adjudication.

25 (f) The department may retain jurisdiction of a canceled or
26 expired permit in order to proceed with any investigation or
27 disciplinary action relating to a permittee.

28 (g) The department may grant permits on forms prescribed by
29 it, which shall be effective for not more than one year from the
30 date of issuance and which shall not be transferable. Applications
31 and permits shall be uniform throughout the state, on forms
32 prescribed by the department.

33 (h) Each applicant shall pay at the time of filing an application
34 for a permit a fee determined by the department which shall not
35 exceed the application processing costs of the department.

36 (i) A permit granted pursuant to this article may be renewed
37 one year from the date of issuance, and annually thereafter,
38 following the timely filing of a complete renewal application with
39 all supporting documents, the payment of a permit renewal fee not

1 to exceed the application processing costs of the department, and
2 a review of the application by the department.

3 (j) Selling, transferring, or otherwise furnishing or obtaining
4 any substance specified in subdivision (a) of Section 11100 without
5 a permit is a misdemeanor or a felony.

6 (k) (1) No person under 18 years of age shall be eligible for a
7 permit under this section.

8 (2) No business for which a permit has been issued shall employ
9 a person under 18 years of age in the capacity of a manager, agent,
10 or representative.

11 (l) (1) An applicant, or an applicant's employees who have
12 direct access, management, or control of any substance listed under
13 subdivision (a) of Section 11100, for an initial permit shall submit
14 with the application one set of 10-print fingerprints for each
15 individual acting in the capacity of an owner, manager, agent, or
16 representative for the applicant, unless the applicant's employees
17 are exempted from this requirement by the Department of Justice.
18 These exemptions may only be obtained upon the written request
19 of the applicant.

20 (2) In the event of subsequent changes in ownership,
21 management, or employment, the permittee shall notify the
22 department in writing within 15 calendar days of the changes, and
23 shall submit one set of 10-print fingerprints for each individual
24 not previously fingerprinted under this section.

25 *SEC. 4. Section 11375.5 is added to the Health and Safety*
26 *Code, to read:*

27 *11375.5. (a) As to the substances specified in subdivision (c),*
28 *this section, but not Sections 11377, 11378, 11379, and 11380,*
29 *shall apply.*

30 *(b) Any person who obtains any controlled substance specified*
31 *in subdivision (c), unless upon the prescription of a physician,*
32 *dentist, podiatrist, or veterinarian, licensed to practice in this*
33 *state, shall be guilty of an infraction or a misdemeanor.*

34 *(c) This section shall apply to any material, compound, mixture,*
35 *or preparation containing ephedrine, pseudoephedrine,*
36 *norpseudoephedrine, phenylpropanolamine, N-methylephedrine,*
37 *N-ethylephedrine, N-methylpseudoephedrine,*
38 *N-ethylpseudoephedrine, chloroephedrine, or*
39 *chloropseudoephedrine, except for pediatric liquid forms as*
40 *specified in subdivision (h) of Section 11100.*

1 *(d) This section shall not be construed to prevent prosecution*
2 *under any other applicable law.*

3 ~~SEC. 4.~~

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