

AMENDED IN ASSEMBLY JANUARY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 36

**Introduced by Assembly ~~Member~~ Members ~~Hill Perea and
Blumenfeld~~**

(Principal coauthor: Senator Padilla)

December 6, 2010

~~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. An act to amend Section 23701i of, and to add Sections 17131.7 and 17201.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 36, as amended, ~~Hill Perea. Ephedrine: retail sale. Income taxes: federal conformity: Health Care and Education Reconciliation Act of 2010.~~

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws, provide certain gross income exclusions, as specified.

This bill would, under both laws, provide additional conformity with federal income tax laws by adopting specified provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 relating to gross income exclusions for reimbursements for medical care expenses under specified plans for dependents, as specified.

This bill would take effect immediately as a tax levy.

~~(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 and monitoring of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, as specified. The bill would require retail distributors to transmit sale information to the National Precursor Log Exchange (NPLEx) for purposes of determining whether the sale would violate these provisions. The bill would require the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators regarding the transaction records in NPLEx, 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 and intent. The bill's provisions would remain in effect only until January 1, 2018. 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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. Section 17131.7 is added to the Revenue and
2 Taxation Code, to read:

3 17131.7. (a) Section 105(b) of the Internal Revenue Code,
4 relating to amounts expended for medical care, as amended by
5 Section 1004(d)(1) of the Health Care and Education
6 Reconciliation Act of 2010 (Public Law 111-152), shall apply,
7 except as otherwise provided.

8 (b) This section shall apply in the same manner and to the same
9 periods as the federal amendments referred to in subdivision (a)
10 apply for federal purposes, except as otherwise provided.

11 SEC. 2. Section 17201.1 is added to the Revenue and Taxation
12 Code, to read:

13 17201.1. (a) Section 162(l)(1) of the Internal Revenue Code,
14 relating to allowance of deduction, as amended by Section
15 1004(d)(2) of the Health Care and Education Reconciliation Act
16 of 2010 (Public Law 111-152), shall apply, except as otherwise
17 provided.

18 (b) Section 162(l)(2)(B) of the Internal Revenue Code, relating
19 to other coverage, as amended by Section 1004(d)(3) of the Health
20 Care and Education Reconciliation Act of 2010 (Public Law
21 111-152), shall apply, except as otherwise provided.

22 (c) This section shall apply in the same manner and to the same
23 periods as the federal amendments referred to in subdivision (a)
24 or subdivision (b), respectively, apply for federal purposes, except
25 as otherwise provided.

26 SEC. 3. Section 23701i of the Revenue and Taxation Code is
27 amended to read:

28 23701i. (a) A voluntary employees' beneficiary association
29 described in Section 501(c)(9) of the Internal Revenue Code, as

1 amended by Section 1004(d)(4) of the Health Care and Education
2 Reconciliation Act of 2010 (Public Law 111-152).

3 (b) The amendments made to this section by the act adding this
4 subdivision shall apply in the same manner and to the same periods
5 as the federal amendments referred to in subdivision (a) apply for
6 federal purposes.

7 SEC. 4. This act provides for a tax levy within the meaning of
8 Article IV of the Constitution and shall go into immediate effect.

9 SECTION 1. Section 11100 of the Health and Safety Code is
10 amended to read:

11 11100. (a) Any manufacturer, wholesaler, retailer, or other
12 person or entity in this state that sells, transfers, or otherwise
13 furnishes any of the following substances to any person or entity
14 in this state or any other state shall submit a report to the
15 Department of Justice of all of those transactions:

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

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

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

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

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

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

37 (d) (1) Any manufacturer, wholesaler, retailer, or other person
38 or entity in this state that sells, transfers, or otherwise furnishes a
39 substance specified in subdivision (a) to a person or business entity
40 in this state or any other state shall, not less than 21 days prior to

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

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

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

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

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

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

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

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

38 (6) (A) Any sale, transfer, furnishing, or receipt of any product
39 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
40 or phenylpropanolamine and which is lawfully sold, transferred,

1 or furnished over the counter without a prescription pursuant to
2 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
3 seq.) or regulations adopted thereunder. However, this section
4 shall apply to preparations in solid or liquid dosage form, except
5 pediatric liquid forms, as defined, containing ephedrine,
6 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
7 where the individual transaction involves more than three packages
8 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
9 or phenylpropanolamine.

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

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

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

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

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

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

1 ~~(2) Except as otherwise provided in subparagraph (A) of~~
2 ~~paragraph (6) of subdivision (c), it is unlawful for any person under~~
3 ~~18 years of age to possess a substance specified in subdivision (a).~~

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

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

10 ~~(h) This section shall remain in effect only until January 1, 2018,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2018, deletes or extends that date.~~

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

15 ~~11100. (a) Any manufacturer, wholesaler, retailer, or other~~
16 ~~person or entity in this state that sells, transfers, or otherwise~~
17 ~~furnishes any of the following substances to any person or entity~~
18 ~~in this state or any other state shall submit a report to the~~
19 ~~Department of Justice of all of those transactions:~~

- 20 ~~(1) Phenyl-2-propanone.~~
- 21 ~~(2) Methylamine.~~
- 22 ~~(3) Ethylamine.~~
- 23 ~~(4) D-lysergic acid.~~
- 24 ~~(5) Ergotamine tartrate.~~
- 25 ~~(6) Diethyl malonate.~~
- 26 ~~(7) Malonic acid.~~
- 27 ~~(8) Ethyl malonate.~~
- 28 ~~(9) Barbituric acid.~~
- 29 ~~(10) Piperidine.~~
- 30 ~~(11) N-acetylanthranilic acid.~~
- 31 ~~(12) Pyrrolidine.~~
- 32 ~~(13) Phenylacetic acid.~~
- 33 ~~(14) Anthranilic acid.~~
- 34 ~~(15) Morpholine.~~
- 35 ~~(16) Ephedrine.~~
- 36 ~~(17) Pseudoephedrine.~~
- 37 ~~(18) Norpseudoephedrine.~~
- 38 ~~(19) Phenylpropanolamine.~~
- 39 ~~(20) Propionic anhydride.~~
- 40 ~~(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 ~~(e) (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 Drug Enforcement~~
22 ~~Administration; precursor business permit number issued by the~~
23 ~~Bureau of Narcotic Enforcement of the Department of Justice;~~
24 ~~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 (e), 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 ~~subsection (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~~
24 ~~seq.), or regulations adopted thereunder, unless exempted from~~
25 ~~the requirements of the federal Controlled Substances Act (21~~
26 ~~U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement~~
27 ~~Administration pursuant to Section 814 of Title 21 of the United~~
28 ~~States Code.~~

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

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

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

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

1 (2) ~~“General merchandise store” is any entity described in Codes~~
2 ~~5311 to 5399, inclusive, and Code 5499 of the Standard Industrial~~
3 ~~Classification (SIC) Manual published by the United States Office~~
4 ~~of Management and Budget, 1987 edition.~~

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

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

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

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

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

40 (j) ~~This section shall become operative on January 1, 2018.~~

1 ~~SEC. 3.—Section 11100.02 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~11100.02.—(a) Notwithstanding any other law, it is unlawful~~
4 ~~for any retail distributor to knowingly do the following, except~~
5 ~~pursuant to a valid prescription from a licensed practitioner with~~
6 ~~prescriptive authority:~~

7 ~~(1) To sell or distribute to the same purchaser within any 30-day~~
8 ~~period more than nine grams, or within any day more than 3.6~~
9 ~~grams, of ephedrine base, pseudoephedrine base,~~
10 ~~norpseudoephedrine base, or phenylpropanolamine base contained~~
11 ~~in any product that is lawfully sold, transferred, or furnished over~~
12 ~~the counter without a prescription pursuant to the Federal Food,~~
13 ~~Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations~~
14 ~~adopted thereunder, unless exempted from the requirements of the~~
15 ~~federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by~~
16 ~~the federal Drug Enforcement Administration pursuant to Section~~
17 ~~814 of Title 21 of the United States Code.~~

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

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

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

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

30 ~~(i) The date and time of the transaction.~~

31 ~~(ii) The identification number presented.~~

32 ~~(iii) The agency issuing the identification and the type of~~
33 ~~identification issued.~~

34 ~~(iv) The name, date of birth, and address of the purchaser.~~

35 ~~(v) The amount of ephedrine base, pseudoephedrine base,~~
36 ~~norpseudoephedrine base, or phenylpropanolamine base contained~~
37 ~~in the material, compound, mixture, or preparation sold.~~

38 ~~(b) The retail distributor shall store any product containing any~~
39 ~~amount of ephedrine, pseudoephedrine, norpseudoephedrine, or~~

1 phenylpropanolamine either behind the counter or in a locked
2 cabinet so that the customer does not have access to the product.
3 (e) (1) To facilitate the monitoring of the sales of
4 nonprescription products containing ephedrine, pseudoephedrine,
5 norpseudoephedrine, or phenylpropanolamine, the retail distributor
6 shall record all of the following information at the point of sale
7 regarding the proposed transaction for the purpose of complying
8 with this section or the federal Combat Methamphetamine
9 Epidemic Act of 2005, or any regulation adopted pursuant to this
10 section or that act, and for no other purpose:
11 (A) The date and time of the transaction.
12 (B) The identification number of the purchaser, issuing agency
13 of the identification, and the type of identification used.
14 (C) The name, date of birth, and address of the purchaser
15 verified through a photo identification of the purchaser.
16 (D) The name, quantity of packages, and total gram weight of
17 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
18 or phenylpropanolamine base contained in a product or products
19 purchased, received, or otherwise acquired.
20 (E) The name or initials of the person making the sale.
21 (2) Beginning January 1, 2013, the retail distributor shall
22 transmit the information immediately to the National Precursor
23 Log Exchange (NPLEx) administered by the National Association
24 of Drug Diversion Investigators (NADDI) for purposes of
25 determining whether the proposed sale would violate this section
26 and therefore may not proceed, provided that the NPLEx system
27 is available to retailers in the state without a charge for accessing
28 the system. The transaction information shall not be accessed,
29 stored, or used by the retail distributor for any purpose other than
30 to meet the requirements set forth in this section or to comply with
31 the provisions of the federal Combat Methamphetamine Epidemic
32 Act of 2005, or any regulation adopted pursuant to this section or
33 that act. The retail distributor shall not maintain a separate copy
34 of the transaction information except as required by the federal
35 Combat Methamphetamine Epidemic Act of 2005.
36 (3) (A) A retail distributor shall provide notice electronically,
37 in writing, or by signage to purchasers that the information
38 collected pursuant to the federal Combat Methamphetamine
39 Epidemic Act of 2005 and this section shall be provided to law

1 enforcement for purposes of determining the legality of a proposed
2 sale.

3 (B) The Legislature finds that it is necessary for probable cause
4 to be demonstrated to trigger an investigation in connection with
5 an individual whose requested purchase is denied by the system a
6 single time.

7 ~~(4) This subdivision shall not be construed to require a retail~~
8 ~~distributor to maintain state-required records relating to the sale~~
9 ~~of products containing ephedrine, pseudoephedrine,~~
10 ~~norpseudoephedrine, or phenylpropanolamine in a separate location~~
11 ~~or log from records required by federal law to be kept with respect~~
12 ~~to those products.~~

13 ~~(5) The recording requirements specified in this subdivision~~
14 ~~shall not apply to the sale of a single package containing not more~~
15 ~~than 60 milligrams of pseudoephedrine, consistent with the federal~~
16 ~~Combat Methamphetamine Epidemic Act of 2005.~~

17 ~~(6) If a retail distributor experiences mechanical or electronic~~
18 ~~failure of the system and is unable to comply with the recording~~
19 ~~requirements of this subdivision, the retail distributor shall maintain~~
20 ~~the required records in a written log or an alternative electronic~~
21 ~~recordkeeping mechanism until the retail distributor is able to~~
22 ~~comply with the recording requirements of this subdivision.~~

23 ~~(d) (1) Provided that the department executes a memorandum~~
24 ~~of understanding (MOU) with NADDI governing access, pursuant~~
25 ~~to this subdivision, NADDI shall forward California transaction~~
26 ~~records in NPLeX to the Department of Justice weekly and provide~~
27 ~~real-time access to NPLeX information through the NPLeX online~~
28 ~~portal to law enforcement in the state as authorized by the~~
29 ~~department.~~

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

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

38 ~~(4) The MOU shall state that no party to the MOU nor any entity~~
39 ~~under contract to provide the electronic authorization and~~
40 ~~monitoring system shall be authorized to use the information~~

1 contained in the system for any purpose other than those set forth
2 in this section, the federal Combat Methamphetamine Epidemic
3 Act of 2005, or any regulation adopted pursuant to this section or
4 that act. However, the system operator shall be authorized to
5 analyze the information for the sole purpose of assessing and
6 improving the performance and efficacy of the system. In addition,
7 the MOU shall require that any retail distributor's access to the
8 electronic authorization and monitoring system's database is
9 limited solely to records of sales transactions made by that retail
10 distributor, which access shall be solely for purposes of complying
11 with the federal Combat Methamphetamine Epidemic Act of 2005
12 or this section, or to respond to a duly authorized law enforcement
13 request or court order for information collected under that act or
14 this section.

15 (5) The system's security program shall comply with the security
16 standards for the Criminal Justice Information System of the
17 Federal Bureau of Investigation and may be audited once a year
18 by the department.

19 (6) A retail distributor's use of the system shall be subject to
20 Section 56.101 of the Civil Code. A retail distributor shall not
21 maintain any records collected under this system for longer than
22 two years, or as otherwise required by the federal Combat
23 Methamphetamine Epidemic Act of 2005.

24 (7) Law enforcement access to the system shall be recorded by
25 means of a unique access code for each individual accessing the
26 system. Each user's history shall be maintained and may be audited
27 by the department.

28 (8) The department may submit recommendations to NADDI
29 regarding system changes to assist in identifying false identification
30 cards.

31 (e) The State Board of Equalization shall notify all retailers
32 about the requirement to submit transactions to NPLeX no later
33 than September 1, 2012.

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

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

37 (2) Any person who has previously been convicted of a violation
38 of this section shall, upon a subsequent conviction thereof, be
39 punished by imprisonment in a county jail not exceeding one year,

1 by a fine not exceeding ten thousand dollars (\$10,000), or by both
2 the fine and imprisonment.

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

5 (1) “Department” means the Department of Justice.

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

9 (3) “General merchandise store” is any entity described in Codes
10 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial
11 Classification (SIC) Manual published by the United States Office
12 of Management and Budget, 1987 edition.

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

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

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

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

1 ~~(j) This section shall remain in effect only until January 1, 2018,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2018, deletes or extends that date.~~

4 ~~SEC. 4. 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.~~