

AMENDED IN ASSEMBLY JUNE 26, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 616

Introduced by Senator DeSaulnier

February 18, 2011

An act to amend Section ~~1363.05~~ 11165 of the ~~Civil Health and Safety Code~~, relating to ~~common interest developments controlled substances~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as amended, DeSaulnier. ~~Common interest developments: open meetings.~~ *Controlled substances: reporting.*

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would require that dispensing pharmacies and clinics report that information to the department twice a week.

~~Existing law provides for the creation of common interest developments and requires that a common interest development be managed by an association that may or may not be incorporated. Existing law prescribes requirements for meetings of the board of directors of the association that manages the development, and requires notice of these meetings to be given to the members of the association at least 4 days prior to the meeting, except as specified. Existing law requires that notice for a common interest development association meeting that will be held solely in executive session be given to members of the association at least 2 days prior to the meeting, except as specified.~~

~~Existing law prohibits the board from conducting a meeting via a series of electronic transmissions, such as electronic mail, except to conduct an emergency meeting. Existing law authorizes the use of electronic transmissions to conduct an emergency meeting if all members of the board consent in writing to that action, as specified.~~

~~This bill would make clarifying changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: no.

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

1 SECTION 1. Section 11165 of the Health and Safety Code is
2 amended to read:

3 11165. (a) To assist law enforcement and regulatory agencies
4 in their efforts to control the diversion and resultant abuse of
5 Schedule II, Schedule III, and Schedule IV controlled substances,
6 and for statistical analysis, education, and research, the Department
7 of Justice shall, contingent upon the availability of adequate funds
8 from the Contingent Fund of the Medical Board of California, the
9 Pharmacy Board Contingent Fund, the State Dentistry Fund, the
10 Board of Registered Nursing Fund, and the Osteopathic Medical
11 Board of California Contingent Fund, maintain the Controlled
12 Substance Utilization Review and Evaluation System (CURES)
13 for the electronic monitoring of, and Internet access to information
14 regarding, the prescribing and dispensing of Schedule II, Schedule
15 III, and Schedule IV controlled substances by all practitioners
16 authorized to prescribe or dispense these controlled substances.

17 (b) The reporting of Schedule III and Schedule IV controlled
18 substance prescriptions to CURES shall be contingent upon the
19 availability of adequate funds from the Department of Justice. The

1 department may seek and use grant funds to pay the costs incurred
2 from the reporting of controlled substance prescriptions to CURES.
3 Funds shall not be appropriated from the Contingent Fund of the
4 Medical Board of California, the Pharmacy Board Contingent
5 Fund, the State Dentistry Fund, the Board of Registered Nursing
6 Fund, the Naturopathic Doctor’s Fund, or the Osteopathic Medical
7 Board of California Contingent Fund to pay the costs of reporting
8 Schedule III and Schedule IV controlled substance prescriptions
9 to CURES.

10 (c) CURES shall operate under existing provisions of law to
11 safeguard the privacy and confidentiality of patients. Data obtained
12 from CURES shall only be provided to appropriate state, local,
13 and federal persons or public agencies for disciplinary, civil, or
14 criminal purposes and to other agencies or entities, as determined
15 by the Department of Justice, for the purpose of educating
16 practitioners and others in lieu of disciplinary, civil, or criminal
17 actions. Data may be provided to public or private entities, as
18 approved by the Department of Justice, for educational, peer
19 review, statistical, or research purposes, provided that patient
20 information, including any information that may identify the
21 patient, is not compromised. Further, data disclosed to any
22 individual or agency as described in this subdivision shall not be
23 disclosed, sold, or transferred to any third party.

24 (d) For each prescription for a Schedule II, Schedule III, or
25 Schedule IV controlled substance, as defined in the controlled
26 substances schedules in federal law and regulations, specifically
27 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21
28 of the Code of Federal Regulations, the dispensing pharmacy or
29 clinic shall provide the following information to the Department
30 of Justice ~~on a weekly basis~~ *twice a week* and in a format specified
31 by the Department of Justice:

32 (1) Full name, address, and the telephone number of the ultimate
33 user or research subject, or contact information as determined by
34 the Secretary of the United States Department of Health and Human
35 Services, and the gender, and date of birth of the ultimate user.

36 (2) The prescriber’s category of licensure and license number;
37 federal controlled substance registration number; and the state
38 medical license number of any prescriber using the federal
39 controlled substance registration number of a government-exempt
40 facility.

- 1 (3) Pharmacy prescription number, license number, and federal
- 2 controlled substance registration number.
- 3 (4) NDC (National Drug Code) number of the controlled
- 4 substance dispensed.
- 5 (5) Quantity of the controlled substance dispensed.
- 6 (6) ICD-9 (diagnosis code), if available.
- 7 (7) Number of refills ordered.
- 8 (8) Whether the drug was dispensed as a refill of a prescription
- 9 or as a first-time request.
- 10 (9) Date of origin of the prescription.
- 11 (10) Date of dispensing of the prescription.

12 ~~(e) This section shall become operative on January 1, 2005.~~

13 ~~SECTION 1. Section 1363.05 of the Civil Code is amended~~
14 ~~to read:~~

15 ~~1363.05. (a) This section shall be known and may be cited as~~
16 ~~the Common Interest Development Open Meeting Act.~~

17 ~~(b) Any member of the association may attend meetings of the~~
18 ~~board of directors of the association, except when the board~~
19 ~~adjourns to, or meets solely in, executive session to consider~~
20 ~~litigation, matters relating to the formation of contracts with third~~
21 ~~parties, member discipline, personnel matters, or to meet with a~~
22 ~~member, upon the member's request, regarding the member's~~
23 ~~payment of assessments, as specified in Section 1367 or 1367.1.~~
24 ~~The board of directors of the association shall meet in executive~~
25 ~~session, if requested by a member who may be subject to a fine,~~
26 ~~penalty, or other form of discipline, and the member shall be~~
27 ~~entitled to attend the executive session. As specified in paragraph~~
28 ~~(2) of subdivision (k), a member of the association shall be entitled~~
29 ~~to attend a teleconference meeting or the portion of a teleconference~~
30 ~~meeting that is open to members, and that meeting or portion of~~
31 ~~the meeting shall be audible to the members in a location specified~~
32 ~~in the notice of the meeting.~~

33 ~~(c) Any matter discussed in executive session shall be generally~~
34 ~~noted in the minutes of the immediately following meeting that is~~
35 ~~open to the entire membership.~~

36 ~~(d) The minutes, minutes proposed for adoption that are marked~~
37 ~~to indicate draft status, or a summary of the minutes, of any~~
38 ~~meeting of the board of directors of an association, other than an~~
39 ~~executive session, shall be available to members within 30 days~~
40 ~~of the meeting. The minutes, proposed minutes, or summary~~

1 minutes shall be distributed to any member of the association upon
2 request and upon reimbursement of the association's costs for
3 making that distribution.

4 (e) ~~Members of the association shall be notified in writing at
5 the time that the pro forma budget required in Section 1365 is
6 distributed, or at the time of any general mailing to the entire
7 membership of the association, of their right to have copies of the
8 minutes of meetings of the board of directors, and how and where
9 those minutes may be obtained.~~

10 (f) ~~Unless the bylaws provide for a longer period of notice,
11 members shall be given notice of the time and place of a meeting
12 as defined in subdivision (k), except for an emergency meeting or
13 a meeting that will be held solely in executive session, at least four
14 days prior to the meeting. Except for an emergency meeting,
15 members shall be given notice of the time and place of a meeting
16 that will be held solely in executive session at least two days prior
17 to the meeting. Notice shall be given by posting the notice in a
18 prominent place or places within the common area and by mail to
19 any owner who had requested notification of board meetings by
20 mail, at the address requested by the owner. Notice may also be
21 given by mail, by delivery of the notice to each unit in the
22 development, by newsletter or similar means of communication,
23 or, with the consent of the member, by electronic means. The notice
24 shall contain the agenda for the meeting.~~

25 (g) ~~An emergency meeting of the board may be called by the
26 president of the association, or by any two members of the
27 governing body other than the president, if there are circumstances
28 that could not have been reasonably foreseen which require
29 immediate attention and possible action by the board, and which
30 of necessity make it impracticable to provide notice as required
31 by this section.~~

32 (h) ~~The board of directors of the association shall permit any
33 member of the association to speak at any meeting of the
34 association or the board of directors, except for meetings of the
35 board held in executive session. A reasonable time limit for all
36 members of the association to speak to the board of directors or
37 before a meeting of the association shall be established by the
38 board of directors.~~

39 (i) (1) ~~Except as described in paragraphs (2) to (4), inclusive,
40 the board of directors of the association may not discuss or take~~

1 action on any item at a nonemergency meeting unless the item was
2 placed on the agenda included in the notice that was posted and
3 distributed pursuant to subdivision (f). This subdivision does not
4 prohibit a resident who is not a member of the board from speaking
5 on issues not on the agenda.

6 ~~(2) Notwithstanding paragraph (1), a member of the board of~~
7 ~~directors, a managing agent or other agent of the board of directors,~~
8 ~~or a member of the staff of the board of directors, may do any of~~
9 ~~the following:~~

10 ~~(A) Briefly respond to statements made or questions posed by~~
11 ~~a person speaking at a meeting as described in subdivision (h).~~

12 ~~(B) Ask a question for clarification, make a brief announcement,~~
13 ~~or make a brief report on his or her own activities, whether in~~
14 ~~response to questions posed by a member of the association or~~
15 ~~based upon his or her own initiative.~~

16 ~~(3) Notwithstanding paragraph (1), the board of directors or a~~
17 ~~member of the board of directors, subject to rules or procedures~~
18 ~~of the board of directors, may do any of the following:~~

19 ~~(A) Provide a reference to, or provide other resources for factual~~
20 ~~information to, its managing agent or other agents or staff.~~

21 ~~(B) Request its managing agent or other agents or staff to report~~
22 ~~back to the board of directors at a subsequent meeting concerning~~
23 ~~any matter, or take action to direct its managing agent or other~~
24 ~~agents or staff to place a matter of business on a future agenda.~~

25 ~~(C) Direct its managing agent or other agents or staff to perform~~
26 ~~administrative tasks that are necessary to carry out this subdivision.~~

27 ~~(4) (A) Notwithstanding paragraph (1), the board of directors~~
28 ~~may take action on any item of business not appearing on the~~
29 ~~agenda posted and distributed pursuant to subdivision (f) under~~
30 ~~any of the following conditions:~~

31 ~~(i) Upon a determination made by a majority of the board of~~
32 ~~directors present at the meeting that an emergency situation exists.~~
33 ~~An emergency situation exists if there are circumstances that could~~
34 ~~not have been reasonably foreseen by the board, that require~~
35 ~~immediate attention and possible action by the board, and that, of~~
36 ~~necessity, make it impracticable to provide notice.~~

37 ~~(ii) Upon a determination made by the board by a vote of~~
38 ~~two-thirds of the members present at the meeting, or, if less than~~
39 ~~two-thirds of total membership of the board is present at the~~
40 ~~meeting, by a unanimous vote of the members present, that there~~

1 is a need to take immediate action and that the need for action
2 came to the attention of the board after the agenda was posted and
3 distributed pursuant to subdivision (f).

4 (iii) The item appeared on an agenda that was posted and
5 distributed pursuant to subdivision (f) for a prior meeting of the
6 board of directors that occurred not more than 30 calendar days
7 before the date that action is taken on the item and, at the prior
8 meeting, action on the item was continued to the meeting at which
9 the action is taken.

10 (B) Before discussing any item pursuant to this paragraph, the
11 board of directors shall openly identify the item to the members
12 in attendance at the meeting.

13 (j) (1) The board of directors shall not take action on any item
14 of business outside of a meeting.

15 (2) (A) Notwithstanding Section 7211 of the Corporations
16 Code, the board of directors shall not conduct a meeting via a series
17 of electronic transmissions, including, but not limited to, electronic
18 mail, except as specified in subparagraph (B).

19 (B) Electronic transmissions may be used as a method of
20 conducting an emergency meeting if all members of the board,
21 individually or collectively, consent in writing to that action, and
22 if the written consent or consents are filed with the minutes of the
23 meeting of the board. These written consents may be transmitted
24 electronically.

25 (k) As used in this section:

26 (1) “Item of business” means any action within the authority of
27 the board, except those actions that the board has validly delegated
28 to any other person or persons, managing agent, officer of the
29 association, or committee of the board comprising less than a
30 majority of the directors.

31 (2) “Meeting” means either of the following:

32 (A) A congregation of a majority of the members of the board
33 at the same time and place to hear, discuss, or deliberate upon any
34 item of business that is within the authority of the board.

35 (B) A teleconference in which a majority of the members of the
36 board, in different locations, are connected by electronic means,
37 through audio or video or both. A teleconference meeting shall be
38 conducted in a manner that protects the rights of members of the
39 association and otherwise complies with the requirements of this
40 title. Except for a meeting that will be held solely in executive

1 ~~session, the notice of the teleconference meeting shall identify at~~
2 ~~least one physical location so that members of the association may~~
3 ~~attend and at least one member of the board of directors shall be~~
4 ~~present at that location. Participation by board members in a~~
5 ~~teleconference meeting constitutes presence at that meeting as long~~
6 ~~as all board members participating in the meeting are able to hear~~
7 ~~one another and members of the association speaking on matters~~
8 ~~before the board.~~

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