

**ASSEMBLY BILL**

**No. 299**

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**Introduced by Assembly Member Holden**

February 12, 2013

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An act to amend Section 4112 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 299, as introduced, Holden. Pharmacy.

The Pharmacy Law governs the business and practice of pharmacy in this state. That law provides that any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state is considered a nonresident pharmacy. The law prohibits a person from acting as a nonresident pharmacy unless he or she has obtained a license, and imposes various disclosure and recordkeeping requirements on nonresident pharmacies. Any person who knowingly violates these provisions is guilty of a misdemeanor.

This bill would prohibit a nonresident pharmacy or a pharmacy located in this state that delivers prescriptions via mail from entering into, or being a party to, an agreement with a health care service plan or disability insurer that requires a plan enrollee or insured to utilize mail order services or that requires a plan enrollee or insured to opt out of a mail order process. By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 4112 of the Business and Professions  
2 Code is amended to read:

3 4112. (a) Any pharmacy located outside this state that ships,  
4 mails, or delivers, in any manner, controlled substances, dangerous  
5 drugs, or dangerous devices into this state shall be considered a  
6 nonresident pharmacy.

7 (b) A person may not act as a nonresident pharmacy unless he  
8 or she has obtained a license from the board. The board may  
9 register a nonresident pharmacy that is organized as a limited  
10 liability company in the state in which it is licensed.

11 (c) A nonresident pharmacy shall disclose to the board the  
12 location, names, and titles of (1) its agent for service of process in  
13 this state, (2) all principal corporate officers, if any, (3) all general  
14 partners, if any, and (4) all pharmacists who are dispensing  
15 controlled substances, dangerous drugs, or dangerous devices to  
16 residents of this state. A report containing this information shall  
17 be made on an annual basis and within 30 days after any change  
18 of office, corporate officer, partner, or pharmacist.

19 (d) All nonresident pharmacies shall comply with all lawful  
20 directions and requests for information from the regulatory or  
21 licensing agency of the state in which it is licensed as well as with  
22 all requests for information made by the board pursuant to this  
23 section. The nonresident pharmacy shall maintain, at all times, a  
24 valid unexpired license, permit, or registration to conduct the  
25 pharmacy in compliance with the laws of the state in which it is a  
26 resident. As a prerequisite to registering with the board, the  
27 nonresident pharmacy shall submit a copy of the most recent  
28 inspection report resulting from an inspection conducted by the  
29 regulatory or licensing agency of the state in which it is located.

30 (e) All nonresident pharmacies shall maintain records of  
31 controlled substances, dangerous drugs, or dangerous devices  
32 dispensed to patients in this state so that the records are readily  
33 retrievable from the records of other drugs dispensed.

1 (f) Any pharmacy subject to this section shall, during its regular  
2 hours of operation, but not less than six days per week, and for a  
3 minimum of 40 hours per week, provide a toll-free telephone  
4 service to facilitate communication between patients in this state  
5 and a pharmacist at the pharmacy who has access to the patient's  
6 records. This toll-free telephone number shall be disclosed on a  
7 label affixed to each container of drugs dispensed to patients in  
8 this state.

9 (g) A nonresident pharmacy shall not permit a pharmacist whose  
10 license has been revoked by the board to manufacture, compound,  
11 furnish, sell, dispense, or initiate the prescription of a dangerous  
12 drug or dangerous device, or to provide any pharmacy-related  
13 service, to a person residing in California.

14 (h) *A nonresident pharmacy or a pharmacy located in this state*  
15 *that delivers prescriptions via mail is prohibited from entering*  
16 *into, or being a party to, an agreement with a health care service*  
17 *plan or disability insurer that requires a plan enrollee or insured*  
18 *to utilize mail order services or that requires a plan enrollee or*  
19 *insured to opt out of a mail order process.*

20 ~~(h)~~

21 (i) The board shall adopt regulations that apply the same  
22 requirements or standards for oral consultation to a nonresident  
23 pharmacy that operates pursuant to this section and ships, mails,  
24 or delivers any controlled substances, dangerous drugs, or  
25 dangerous devices to residents of this state, as are applied to an  
26 in-state pharmacy that operates pursuant to Section 4037 when the  
27 pharmacy ships, mails, or delivers any controlled substances,  
28 dangerous drugs, or dangerous devices to residents of this state.  
29 The board shall not adopt any regulations that require face-to-face  
30 consultation for a prescription that is shipped, mailed, or delivered  
31 to the patient. The regulations adopted pursuant to this subdivision  
32 shall not result in any unnecessary delay in patients receiving their  
33 medication.

34 ~~(i)~~

35 (j) The registration fee shall be the fee specified in subdivision  
36 (a) of Section 4400.

37 ~~(j)~~

38 (k) The registration requirements of this section shall apply only  
39 to a nonresident pharmacy that ships, mails, or delivers controlled

1 substances, dangerous drugs, and dangerous devices into this state  
2 pursuant to a prescription.

3 ~~(k)~~

4 (l) Nothing in this section shall be construed to authorize the  
5 dispensing of contact lenses by nonresident pharmacists except as  
6 provided by Section 4124.

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.