

AMENDED IN SENATE JANUARY 27, 2014

SENATE BILL

No. 506

Introduced by Senator Hill

February 21, 2013

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 506, as amended, Hill. Ephedrine: retail sale.

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

This bill would instead provide that it is a misdemeanor, punishable as specified, for a 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 a 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 the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators (NADDI) and the vendor of the system governing access and oversight of the California transaction records regarding the transaction records, as specified, including requiring that NADDI reimburse the department for costs incurred in executing the memorandum of understanding, including the competitive bidding process, and for costs incurred in performing oversight and other duties. The bill would also require, if the memorandum of understanding is entered into, retail distributors to transmit, on and after July 1, 2014, 2015, sale information to the National Precursor Log Exchange (NPLEx) system 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 prohibit use of 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 require that the system be available to the department and state law enforcement at no charge and would prohibit the Department of Justice or any other state agency from bearing any cost for the development, installation, or maintenance of the system. The bill would specify legislative findings and intent.*

(2) *The bill's provisions would become operative as of February 1, 2015, but only if the NADDI voluntarily agrees, on or before January 15, 2015, to reimburse the Department of Justice for costs incurred in the execution of the memorandum of understanding, including the competitive bidding process, and for costs incurred in performing oversight and other duties, as specified. The bill would require the Department of Justice to post on its Internet Web site on or before*

January 19, 2015, whether or not NADDI has agreed to reimburse the department for these costs. The bill's provisions would remain in effect only until January 1, 2019. By creating a new crime, this bill would impose a state-mandated local program.

(2)

(3) 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 11100 of the Health and Safety Code is
2 amended to read:

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

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

- 1 (19) Phenylpropanolamine.
- 2 (20) Propionic anhydride.
- 3 (21) Isosafrole.
- 4 (22) Safrole.
- 5 (23) Piperonal.
- 6 (24) Thionyl chloride.
- 7 (25) Benzyl cyanide.
- 8 (26) Ergonovine maleate.
- 9 (27) N-methylephedrine.
- 10 (28) N-ethylephedrine.
- 11 (29) N-methylpseudoephedrine.
- 12 (30) N-ethylpseudoephedrine.
- 13 (31) Chloroephedrine.
- 14 (32) Chloropseudoephedrine.
- 15 (33) Hydriodic acid.
- 16 (34) Gamma-butyrolactone, including butyrolactone;
- 17 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 18 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 19 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 20 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 21 with Chemical ~~Abstract~~ *Abstracts* Service number ~~(96-48-0)~~
- 22 *96-48-0*.
- 23 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 24 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 25 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 26 1,4-diol with Chemical ~~Abstract~~ *Abstracts* Service number
- 27 ~~(110-63-4)~~ *110-63-4*.
- 28 (36) Red phosphorus, including white phosphorus,
- 29 hypophosphorous acid and its salts, ammonium hypophosphite,
- 30 calcium hypophosphite, iron hypophosphite, potassium
- 31 hypophosphite, manganese hypophosphite, magnesium
- 32 hypophosphite, sodium hypophosphite, and phosphorous acid and
- 33 its salts.
- 34 (37) Iodine or tincture of iodine.
- 35 (38) Any of the substances listed by the Department of Justice
- 36 in regulations promulgated pursuant to subdivision (b).
- 37 (b) The Department of Justice may adopt rules and regulations
- 38 in accordance with Chapter 3.5 (commencing with Section 11340)
- 39 of Part 1 of Division 3 of Title 2 of the Government Code that add
- 40 substances to subdivision (a) if the substance is a precursor to a

1 controlled substance and delete substances from subdivision (a).
2 However, no regulation adding or deleting a substance shall have
3 any effect beyond March 1 of the year following the calendar year
4 during which the regulation was adopted.

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

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

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

39 (B) The department may authorize the submission of the
40 notification on a monthly basis with respect to repeated, regular

1 transactions between an exporter and an importer involving a
2 substance specified in subdivision (a), if the department determines
3 that a pattern of regular supply of the substance exists between the
4 exporter and importer and that the importer has established a record
5 of utilization of the substance for lawful purposes.

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

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

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

30 (1) A pharmacist or other authorized person who sells or
31 furnishes a substance upon the prescription of a physician, dentist,
32 podiatrist, or veterinarian.

33 (2) A physician, dentist, podiatrist, or veterinarian who
34 administers or furnishes a substance to his or her patients.

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

1 (4) An 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) The sale, transfer, furnishing, or receipt of a product
7 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine and that is lawfully sold, transferred, or
9 furnished over the counter without a prescription pursuant to the
10 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.)
11 or regulations adopted thereunder. However, this section shall
12 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 Section 814(d) of Title 21 of the United States Code as an exempt
24 product.

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

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

32 (f) (1) A 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 pursuant to subdivision (h) of Section 1170 of the
2 Penal Code, or by imprisonment in a county jail not exceeding one
3 year, by a fine not exceeding one hundred thousand dollars
4 (\$100,000), or by both the fine and imprisonment.

5 (g) (1) Except as otherwise provided in subparagraph (A) of
6 paragraph (6) of subdivision (e), it is unlawful for a manufacturer,
7 wholesaler, retailer, or other person to sell, transfer, or otherwise
8 furnish a substance specified in subdivision (a) to a person under
9 18 years of age.

10 (2) Except as otherwise provided in subparagraph (A) of
11 paragraph (6) of subdivision (e), it is unlawful for any person under
12 18 years of age to possess a substance specified in subdivision (a).

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

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

19 (h) This section shall remain in effect only until January 1, 2019,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before January 1, 2019, deletes or extends that date.

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

24 11100. (a) Any manufacturer, wholesaler, retailer, or other
25 person or entity in this state that sells, transfers, or otherwise
26 furnishes any of the following substances to any person or entity
27 in this state or any other state shall submit a report to the
28 Department of Justice of all of those transactions:

- 29 (1) Phenyl-2-propanone.
- 30 (2) Methylamine.
- 31 (3) Ethylamine.
- 32 (4) D-lysergic acid.
- 33 (5) Ergotamine tartrate.
- 34 (6) Diethyl malonate.
- 35 (7) Malonic acid.
- 36 (8) Ethyl malonate.
- 37 (9) Barbituric acid.
- 38 (10) Piperidine.
- 39 (11) N-acetylanthranilic acid.
- 40 (12) Pyrrolidine.

- 1 (13) Phenylacetic acid.
- 2 (14) Anthranilic acid.
- 3 (15) Morpholine.
- 4 (16) Ephedrine.
- 5 (17) Pseudoephedrine.
- 6 (18) Norpseudoephedrine.
- 7 (19) Phenylpropanolamine.
- 8 (20) Propionic anhydride.
- 9 (21) Isosafrole.
- 10 (22) Safrole.
- 11 (23) Piperonal.
- 12 (24) Thionyl chloride.
- 13 (25) Benzyl cyanide.
- 14 (26) Ergonovine maleate.
- 15 (27) N-methylephedrine.
- 16 (28) N-ethylephedrine.
- 17 (29) N-methylpseudoephedrine.
- 18 (30) N-ethylpseudoephedrine.
- 19 (31) Chloroephedrine.
- 20 (32) Chloropseudoephedrine.
- 21 (33) Hydriodic acid.
- 22 (34) Gamma-butyrolactone, including butyrolactone;
- 23 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 24 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 25 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 26 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 27 with Chemical Abstracts Service number (96-48-0)
- 28 96-48-0.
- 29 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 30 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 31 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 32 1,4-diol with Chemical Abstracts Service number
- 33 (~~110-63-4~~) 110-63-4.
- 34 (36) Red phosphorus, including white phosphorus,
- 35 hypophosphorous acid and its salts, ammonium hypophosphite,
- 36 calcium hypophosphite, iron hypophosphite, potassium
- 37 hypophosphite, manganese hypophosphite, magnesium
- 38 hypophosphite, sodium hypophosphite, and phosphorous acid and
- 39 its salts.
- 40 (37) Iodine or tincture of iodine.

1 (38) Any of the substances listed by the Department of Justice
2 in regulations promulgated pursuant to subdivision (b).

3 (b) The Department of Justice may adopt rules and regulations
4 in accordance with Chapter 3.5 (commencing with Section 11340)
5 of Part 1 of Division 3 of Title 2 of the Government Code that add
6 substances to subdivision (a) if the substance is a precursor to a
7 controlled substance and delete substances from subdivision (a).
8 However, no regulation adding or deleting a substance shall have
9 any effect beyond March 1 of the year following the calendar year
10 during which the regulation was adopted.

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

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

35 (2) (A) A manufacturer, wholesaler, retailer, or other person
36 or entity in this state that exports a substance specified in
37 subdivision (a) to a person or business entity located in a foreign
38 country shall, on or before the date of exportation, submit to the
39 Department of Justice a notification of that transaction. The
40 notification shall include the name and quantity of the substance

1 to be exported and the name, address, and, if assigned by the
2 foreign country or subdivision thereof, business identification
3 number of the person or business entity located in a foreign country
4 importing the substance.

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

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

29 (2) The person selling, transferring, or otherwise furnishing a
30 substance specified in subdivision (a) shall affix his or her signature
31 or otherwise identify himself or herself as a witness to the
32 identification of the purchaser or purchasing individual, and shall,
33 if a common carrier is used, maintain a manifest of the delivery
34 to the purchaser for three years.

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

36 (1) A pharmacist or other authorized person who sells or
37 furnishes a substance upon the prescription of a physician, dentist,
38 podiatrist, or veterinarian.

39 (2) A physician, dentist, podiatrist, or veterinarian who
40 administers or furnishes a substance to his or her patients.

1 (3) A manufacturer or wholesaler licensed by the California
2 State Board of Pharmacy that sells, transfers, or otherwise furnishes
3 a substance to a licensed pharmacy, physician, dentist, podiatrist,
4 or veterinarian, or a retail distributor, provided that the
5 manufacturer or wholesaler submits records of any suspicious sales
6 or transfers as determined by the Department of Justice.

7 (4) An analytical research facility that is registered with the
8 federal Drug Enforcement Administration of the United States
9 Department of Justice.

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

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

24 (B) An ephedrine, pseudoephedrine, norpseudoephedrine, or
25 phenylpropanolamine product subsequently removed from
26 exemption pursuant to Section 814 of Title 21 of the United States
27 Code shall similarly no longer be exempt from state reporting or
28 permitting requirements, unless otherwise reinstated pursuant to
29 Section 814(d) of Title 21 of the United States Code as an exempt
30 product.

31 (7) The sale, transfer, furnishing, or receipt of a betadine or
32 povidone solution with an iodine content not exceeding 1 percent
33 in containers of eight ounces or less, or a tincture of iodine not
34 exceeding 2 percent in containers of one ounce or less, that is sold
35 over the counter.

36 (8) Transfer of a substance specified in subdivision (a) for
37 purposes of lawful disposal as waste.

38 (f) (1) A person specified in subdivision (a) or (d) who does
39 not submit a report as required by that subdivision or who
40 knowingly submits a report with false or fictitious information

1 shall be punished by imprisonment in a county jail not exceeding
2 six months, by a fine not exceeding five thousand dollars (\$5,000),
3 or by both the fine and imprisonment.

4 (2) A person specified in subdivision (a) or (d) who has
5 previously been convicted of a violation of paragraph (1) shall,
6 upon a subsequent conviction thereof, be punished by
7 imprisonment pursuant to subdivision (h) of Section 1170 of the
8 Penal Code, or by imprisonment in a county jail not exceeding one
9 year, by a fine not exceeding one hundred thousand dollars
10 (\$100,000), or by both the fine and imprisonment.

11 (g) (1) Except as otherwise provided in subparagraph (A) of
12 paragraph (6) of subdivision (e), it is unlawful for a manufacturer,
13 wholesaler, retailer, or other person to sell, transfer, or otherwise
14 furnish a substance specified in subdivision (a) to a person under
15 18 years of age.

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

19 (3) Notwithstanding any other law, it is unlawful for a retail
20 distributor to (A) sell in a single transaction more than three
21 packages of a product that he or she knows to contain ephedrine,
22 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
23 or (B) knowingly sell more than nine grams of ephedrine,
24 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
25 other than pediatric liquids as defined. Except as otherwise
26 provided in this section, the three package per transaction limitation
27 or nine gram per transaction limitation imposed by this paragraph
28 shall apply to any product that is lawfully sold, transferred, or
29 furnished over the counter without a prescription pursuant to the
30 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
31 seq.), or regulations adopted thereunder, unless exempted from
32 the requirements of the federal Controlled Substances Act (21
33 U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement
34 Administration pursuant to Section 814 of Title 21 of the United
35 States Code.

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

37 (B) A person who has previously been convicted of a violation
38 of this subdivision 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 article, the following terms have
4 the following meanings:

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

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

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

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

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

35 (6) “Sale for personal use” means the sale, in a single
36 transaction, to an individual customer for a legitimate medical use
37 of a product containing ephedrine, pseudoephedrine,
38 norpseudoephedrine, or phenylpropanolamine in dosages at or
39 below that specified in paragraph (3) of subdivision (g). “Sale for

1 personal use” also includes the sale of those products to employers
2 to be dispensed to employees from first aid kits or medicine chests.

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

8 (j) This section shall become operative on January 1, 2019.

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

11 11100.02. (a) Notwithstanding any other law, it is unlawful
12 for a retail distributor to knowingly do any of the following, except
13 pursuant to a valid prescription from a licensed practitioner with
14 prescriptive authority:

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

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

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

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

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

38 (i) The date and time of the transaction.

39 (ii) The identification number presented.

- 1 (iii) The agency issuing the identification and the type of
2 identification issued.
- 3 (iv) The name, date of birth, and address of the purchaser.
- 4 (v) The amount of ephedrine base, pseudoephedrine base,
5 norpseudoephedrine base, or phenylpropanolamine base contained
6 in the material, compound, mixture, or preparation sold.
- 7 (b) The retail distributor shall store any product containing any
8 amount of ephedrine, pseudoephedrine, norpseudoephedrine, or
9 phenylpropanolamine either behind the counter or in a locked
10 cabinet so that the customer does not have access to the product.
- 11 (c) (1) To facilitate the monitoring of the sales of
12 nonprescription products containing ephedrine, pseudoephedrine,
13 norpseudoephedrine, or phenylpropanolamine, the retail distributor
14 shall record all of the following information at the point of sale
15 regarding the proposed transaction for the purpose of complying
16 with this section or the federal Combat Methamphetamine
17 Epidemic Act of 2005, or any regulation adopted pursuant to this
18 section or that act, and for no other purpose:
- 19 (A) The date and time of the transaction.
- 20 (B) The identification number of the purchaser, issuing agency
21 of the identification, and the type of identification used.
- 22 (C) The name, date of birth, and address of the purchaser
23 verified through a photo identification of the purchaser.
- 24 (D) The name, quantity of packages, and total gram weight of
25 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
26 or phenylpropanolamine base contained in a product or products
27 purchased, received, or otherwise acquired.
- 28 (E) The name or initials of the person making the sale.
- 29 (2) (A) On and after July 1, ~~2014~~, 2015, the retail distributor
30 shall transmit the information immediately to ~~the National~~
31 ~~Precursor Log Exchange (NPLEx) administered by the National~~
32 ~~Association of Drug Diversion Investigators (NADDI) a vendor~~
33 *to collect, administer, and provide access to the transaction data*
34 for purposes of determining whether the proposed sale would
35 violate this section and therefore may not proceed, provided that
36 the ~~NPLEx~~ system is available to retailers in the state without a
37 charge for accessing the system. The transaction information shall
38 not be accessed, stored, or used by the retail distributor or law
39 enforcement for any purpose other than to meet the requirements
40 set forth in this section or to comply with the provisions of the

1 federal Combat Methamphetamine Epidemic Act of 2005, or any
2 regulation adopted pursuant to this section or that act. The retail
3 distributor shall not maintain a separate copy of the transaction
4 information and shall not have direct access to individual
5 information or sales records entered into the NPLEx system, except
6 as required by the federal Combat Methamphetamine Epidemic
7 Act of 2005.

8 *(B) Subparagraph (A) shall only become operative if the*
9 *department executes a memorandum of understanding (MOU)*
10 *with NADDI and the vendor of the system governing access and*
11 *oversight of the California transaction records pursuant to*
12 *paragraph (1) of subdivision (d). Prior to executing the MOU, the*
13 *Department of Justice shall carry out a competitive bidding process*
14 *for a vendor to collect, administer, and provide access to the*
15 *transaction data transmitted by retail distributors.*

16 (3) (A) A retail distributor shall provide notice electronically,
17 in writing, or by signage to purchasers at the time of purchase that
18 the information collected pursuant to the federal Combat
19 Methamphetamine Epidemic Act of 2005 and this section shall be
20 entered into a single database as specified in paragraph (2) and
21 provided to law enforcement for purposes of determining the
22 legality of a proposed sale.

23 ~~(B) The Legislature finds that it is necessary for probable~~
24 ~~Probable cause to~~ shall be demonstrated to trigger an investigation
25 in connection with an individual whose requested purchase is
26 denied by the system a single time.

27 (C) Access by law enforcement to the data contained in the
28 system from a location other than the retailer shall be limited to
29 the records of an individual whose attempted purchase has been
30 denied by the system.

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

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

1 (6) If a retail distributor experiences mechanical or electronic
 2 failure of the system and is unable to comply with the recording
 3 requirements of this subdivision, the retail distributor shall maintain
 4 the required records in a written log or an alternative electronic
 5 recordkeeping mechanism until the retail distributor is able to
 6 comply with the recording requirements of this subdivision. Written
 7 logs shall be maintained only for the purpose of compliance with
 8 this subdivision.

9 ~~(d) (1) Provided that the department executes a memorandum~~
 10 ~~of understanding (MOU) with NADDI governing access, pursuant~~
 11 ~~to this subdivision, NADDI shall forward California transaction~~
 12 ~~records in NPLeX to the Department of Justice weekly and provide~~
 13 ~~real-time access to NPLeX information through the NPLeX online~~
 14 ~~portal to law enforcement in the state as authorized by the~~
 15 ~~department. The MOU shall constitute an enforceable contract.~~
 16 *The MOU described in paragraph (2) of subdivision (c) between*
 17 *the department, NADDI, and the vendor of the system shall require*
 18 *NADDI to reimburse the department for costs incurred in executing*
 19 *the MOU, including the competitive bidding process, and for costs*
 20 *incurred in performing oversight and other duties required by this*
 21 *section and the MOU.*

22 (2) *The MOU shall require NADDI to forward California*
 23 *transaction records in the system to the Department of Justice*
 24 *weekly and provide real-time access to the information through*
 25 *the vendor’s online portal to law enforcement in the state as*
 26 *authorized by the department.*

27 (3) *The MOU shall constitute an enforceable contract.*

28 ~~(2)~~

29 (4) Access to the system shall be available at no charge to the
 30 department and law enforcement in this state as authorized pursuant
 31 to paragraph (1).

32 ~~(3)~~

33 (5) The system shall allow retail distributors of products
 34 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
 35 phenylpropanolamine to enter into the database the information
 36 specified in subdivision (c) regarding the proposed sale of those
 37 products.

38 ~~(4)~~

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

4 (5)

5 (7) Neither the department nor any state agency shall bear any
6 cost for the development, installation, or maintenance of the
7 system.

8 (6)

9 (8) The MOU shall state that no party to the MOU nor any entity
10 under contract to provide the electronic authorization and
11 monitoring system shall be authorized to use the information
12 contained in the system for any purpose other than those set forth
13 in this section, the federal Combat Methamphetamine Epidemic
14 Act of 2005, or any regulation adopted pursuant to this section or
15 that act. However, the system operator shall be authorized to
16 analyze the information for the sole purpose of assessing and
17 improving the performance and efficacy of the system. In addition,
18 the MOU shall require that a retail distributor's access to the
19 electronic authorization and monitoring system's database is
20 limited solely to records of sales transactions made by that retail
21 distributor, which access shall be solely for purposes of complying
22 with the federal Combat Methamphetamine Epidemic Act of 2005
23 or this section, or to respond to a duly authorized law enforcement
24 request or court order for information collected under that act or
25 this section.

26 (7)

27 (9) The system's security program shall comply with the security
28 standards for the Criminal Justice Information System of the
29 Federal Bureau of Investigation and may be audited once a year
30 by the department.

31 (8)

32 (10) The use of the system by a retail distributor or vendor of
33 the ~~NPLEx~~ system shall be subject to Section 56.101 of the Civil
34 Code, *including the purchaser's right of access or to receive a*
35 *copy of his or her purchaser records.* A retail distributor or a
36 vendor of the ~~NPLEx~~ system holding the ~~NPLEx~~ data shall not
37 maintain any records collected under this system for longer than
38 two years, or as otherwise required by the federal Combat
39 Methamphetamine Epidemic Act of 2005 and shall be destroyed
40 pursuant to Section 1798.81 of the Civil Code.

1 ~~(9)~~
 2 (11) Law enforcement access to the system shall be recorded
 3 by means of a unique access code for each individual accessing
 4 the system. Each user’s history shall be maintained and may be
 5 audited by the department.
 6 ~~(10)~~
 7 (12) The department may submit recommendations to NADDI
 8 regarding system changes to assist in identifying false identification
 9 cards.
 10 ~~(11)~~
 11 (13) Disputes relating to compliance with this section arising
 12 against a vendor of the ~~NPLEX~~ system shall be subject to a court
 13 of competent jurisdiction in California and shall be governed by
 14 California law.
 15 (e) The State Board of Equalization shall notify all retailers
 16 about the requirement to submit transactions to ~~NPLEX~~ *the system*
 17 no later than April 1, 2014.
 18 (f) This section shall not apply to a health care practitioner with
 19 prescriptive authority who is currently licensed in this state.
 20 (g) (1) A first violation of this section is a misdemeanor.
 21 (2) A person who has previously been convicted of a violation
 22 of this section shall, upon a subsequent conviction thereof, be
 23 punished by imprisonment in a county jail not exceeding one year,
 24 by a fine not exceeding ten thousand dollars (\$10,000), or by both
 25 the fine and imprisonment.
 26 (h) For the purposes of this section, the following terms have
 27 the following meanings:
 28 (1) “Department” means the Department of Justice.
 29 (2) “Drug store” is an entity described in Code 5912 of the
 30 Standard Industrial Classification (SIC) Manual published by the
 31 United States Office of Management and Budget, 1987 edition.
 32 (3) “General merchandise store” is an entity described in Codes
 33 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial
 34 Classification (SIC) Manual published by the United States Office
 35 of Management and Budget, 1987 edition.
 36 (4) “Grocery store” is an entity described in Code 5411 of the
 37 Standard Industrial Classification (SIC) Manual published by the
 38 United States Office of Management and Budget, 1987 edition.
 39 (5) “Retail distributor” means a grocery store, general
 40 merchandise store, drugstore, or other related entity, the activities

1 of which, as a distributor of ephedrine, pseudoephedrine,
2 norpseudoephedrine, or phenylpropanolamine products, are limited
3 exclusively to the sale of ephedrine, pseudoephedrine,
4 norpseudoephedrine, or phenylpropanolamine products for personal
5 use both in number of sales and volume of sales, either directly to
6 walk-in customers or in face-to-face transactions by direct sales.
7 “Retail distributor” includes an entity that makes a direct sale, but
8 does not include the parent company of that entity if the company
9 is not involved in direct sales regulated by this article.

10 (6) “Sale for personal use” means the sale in a single transaction
11 to an individual customer for a legitimate medical use of a product
12 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
13 phenylpropanolamine in amounts at or below that specified in
14 subdivision (a). “Sale for personal use” also includes the sale of
15 those products to employers to be dispensed to employees from
16 first aid kits or medicine chests.

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

22 (j) This section shall remain in effect only until January 1, 2019,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2019, deletes or extends that date.

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 SEC. 5. (a) *This act shall become operative on February 1,*
35 *2015.*

36 (b) *This act shall become operative only if the National*
37 *Association of Drug Diversion Investigators (NADDI) voluntarily*
38 *agrees, on or before January 15, 2015, to reimburse the department*
39 *for costs incurred in the execution of the memorandum of*
40 *understanding, including the competitive bidding process, and for*

1 *costs incurred in performing oversight and other duties as*
2 *described in Section 11100.02 of the Health and Safety Code, as*
3 *amended by this act. The Department of Justice shall post on its*
4 *Internet Web site on or before January 19, 2015, whether or not*
5 *NADDI has agreed to reimburse the department for these costs.*

O