

Senate Bill No. 1036

CHAPTER 627

An act to amend Sections 11400 and 11401 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 25, 2016. Filed with
Secretary of State September 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, Hernandez. Controlled substances: synthetic cannabinoids: analogs.

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic cannabinoid compound or any synthetic cannabinoid derivative and makes it an infraction to use or possess those drugs. Existing law provides that a controlled substance analog, which includes a substance the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance, is treated the same as the Schedule I or Schedule II controlled substance of which it is an analog for the purposes of specified provisions of law.

This bill would expand the definition of a controlled substance analog to include a substance the chemical structure of which is substantially similar to the chemical structure of a synthetic cannabinoid compound and would require the controlled substance analogs of synthetic cannabinoid compounds to be treated the same as the synthetic cannabinoid compound of which it is an analog for the purpose of the provisions criminalizing synthetic cannabinoid compounds. By expanding the scope of a crime, this 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.

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

SECTION 1. Section 11400 of the Health and Safety Code is amended to read:

11400. The Legislature finds and declares that the laws of this state which prohibit the possession, possession for sale, offer for sale, sale, manufacturing, and transportation of controlled substances are being circumvented by the commission of those acts with respect to analogs of

specified controlled substances which have, are represented to have, or are intended to have effects on the central nervous system which are substantially similar to, or greater than, the controlled substances classified in Sections 11054 and 11055 and the synthetic cannabinoid compounds defined in Section 11357.5, of which they are analogs. These analogs have been synthesized by so-called “street chemists” and imported into this state from other jurisdictions as precursors to, or substitutes for, controlled substances and synthetic cannabinoid compounds, due to the nonexistence of applicable criminal penalties. These analogs present grave dangers to the health and safety of the people of this state. Therefore, it is the intent of the Legislature that a controlled substance or synthetic cannabinoid compound analog as defined in Section 11401 be considered identical, for purposes of the penalties and punishment specified in Chapter 6 (commencing with Section 11350), to the controlled substance in Section 11054 or 11055 or the synthetic cannabinoid compound defined in Section 11357.5 of which it is an analog.

SEC. 2. Section 11401 of the Health and Safety Code is amended to read:

11401. (a) A controlled substance analog shall, for the purposes of Chapter 6 (commencing with Section 11350), be treated the same as the controlled substance classified in Section 11054 or 11055 or the synthetic cannabinoid compound defined in Section 11357.5 of which it is an analog.

(b) Except as provided in subdivision (c), the term “controlled substance analog” means either of the following:

(1) A substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in Section 11054 or 11055 or a synthetic cannabinoid compound defined in Section 11357.5.

(2) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance classified in Section 11054 or 11055 or a synthetic cannabinoid compound defined in Section 11357.5.

(c) The term “controlled substance analog” does not mean any of the following:

(1) A substance for which there is an approved new drug application as defined under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or that is generally recognized as safe and effective for use pursuant to Sections 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 351, 352, and 353) and Section 330 et seq. of Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, a substance for which an exemption is in effect for investigational use for that person under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

(3) A substance, before an exemption as specified in paragraph (2) takes effect with respect to the substance, to the extent the substance is not intended for human consumption.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.