

AMENDED IN ASSEMBLY JUNE 1, 1999
AMENDED IN ASSEMBLY MAY 6, 1999
AMENDED IN ASSEMBLY MARCH 23, 1999
AMENDED IN ASSEMBLY MARCH 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 162

**Introduced by Assembly Member Runner
(Coauthors: Assembly Members Battin and Cedillo)**

January 15, 1999

An act to amend Section 11100 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Runner. Controlled substances: ephedrine: retail distributors.

(1) Existing law regulates any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes specified chemical substances to any person in this state, as specified.

This bill would make it a misdemeanor for any retail distributor to sell in a single transaction more than ~~6~~ 4 packages of a product that he or she knows to contain ephedrine, *pseudoephedrine*, *norpseudoephedrine*, or *phenylpropanolamine*, or to knowingly sell more than ~~24~~ 6 grams of ephedrine, ~~as defined~~ *pseudoephedrine*, *norpseudoephedrine*, or *phenylpropanolamine*. The bill also

would make the ~~6~~ ⁴ packages per transaction limitation or 6 grams per transaction limitation ~~inapplicable~~ ^{applicable} to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to specified provisions of federal law, *except as specified*. The bill would make clarifying changes. By creating a new crime, this bill would impose a state-mandated local program.

This bill would also provide that it is the intent of the Legislature that specified provisions of state law shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter ~~ephedrine-containing~~ products *containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.*

(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.

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

- 1 SECTION 1. Section 11100 of the Health and Safety
- 2 Code is amended to read:
- 3 11100. (a) Any manufacturer, wholesaler, retailer, or
- 4 other person in this state who sells, transfers, or otherwise
- 5 furnishes any of the following substances to any person or
- 6 business entity in this state or any other state shall submit
- 7 a report to the Department of Justice of all of those
- 8 transactions:
- 9 (1) Phenyl-2-propanone.
- 10 (2) Methylamine.
- 11 (3) Ethylamine.
- 12 (4) D-lysergic acid.
- 13 (5) Ergotamine tartrate.
- 14 (6) Diethyl malonate.
- 15 (7) Malonic acid.
- 16 (8) Ethyl malonate.



- 1 (9) Barbituric acid.
- 2 (10) Piperidine.
- 3 (11) N-acetylanthranilic acid.
- 4 (12) Pyrrolidine.
- 5 (13) Phenylacetic acid.
- 6 (14) Anthranilic acid.
- 7 (15) Morpholine.
- 8 (16) Ephedrine.
- 9 (17) Pseudoephedrine.
- 10 (18) Norpseudoephedrine.
- 11 (19) Phenylpropanolamine.
- 12 (20) Propionic anhydride.
- 13 (21) Isosafrole.
- 14 (22) Safrole.
- 15 (23) Piperonal.
- 16 (24) Thionylchloride.
- 17 (25) Benzyl cyanide.
- 18 (26) Ergonovine maleate.
- 19 (27) N-methylephedrine.
- 20 (28) N-ethylephedrine.
- 21 (29) N-methylpseudoephedrine.
- 22 (30) N-ethylpseudoephedrine.
- 23 (31) Chloroephedrine.
- 24 (32) Chlorpseudoephedrine.
- 25 (33) Hydriodic acid.
- 26 (34) Any of the substances listed by the Department
- 27 of Justice in regulations promulgated pursuant to
- 28 subdivision (b).
- 29 (b) The Department of Justice may adopt rules and
- 30 regulations in accordance with Chapter 3.5
- 31 (commencing with Section 11340) of Part 1 of Division 3
- 32 of Title 2 of the Government Code that add substances to
- 33 subdivision (a) if the substance is a precursor to a
- 34 controlled substance and delete substances from
- 35 subdivision (a). However, no regulation adding or
- 36 deleting a substance shall have any effect beyond March
- 37 1 of the year following the calendar year during which the
- 38 regulation was adopted.
- 39 (c) (1) Any manufacturer, wholesaler, retailer, or
- 40 other person in this state, prior to selling, transferring, or



1 otherwise furnishing any substance specified in
2 subdivision (a) to any person or business entity in this
3 state or any other state, shall require (A) a letter of
4 authorization from that person or business entity that
5 includes the currently valid business license number or
6 federal Drug Enforcement Administration (DEA)
7 registration number, the address of the business, and a full
8 description of how the substance is to be used, and (B)
9 proper identification from the purchaser. The
10 requirement for a full description of how the substance is
11 to be used does not require the person or business entity
12 to reveal their chemical processes that are typically
13 considered trade secrets and proprietary information.

14 (2) For the purposes of this subdivision, “proper
15 identification” for in-state or out-of-state purchasers
16 includes a valid motor vehicle operator’s license or other
17 official and valid state-issued identification of the
18 purchaser, or individual representing the purchasing
19 business entity, which contains a photograph of the
20 purchaser or purchasing individual, and includes the
21 current domicile or mailing address of the purchaser or
22 purchasing individual, other than a post office box
23 number. “Proper identification” also includes the motor
24 vehicle license number of the motor vehicle used by the
25 purchaser or purchasing individual at the time of transfer
26 or the name of the common carrier and the name and
27 valid motor vehicle operator license number of the driver
28 of the common carrier, and the signature of the
29 purchaser, purchasing individual, or driver of the
30 common carrier. The person selling, transferring, or
31 otherwise furnishing any substance specified in
32 subdivision (a) shall affix his or her signature as a witness
33 to the signature and identification of the purchaser,
34 purchasing individual, or driver of the common carrier.

35 (d) Any manufacturer, wholesaler, retailer, or other
36 person in this state who sells, transfers, or otherwise
37 furnishes a substance specified in subdivision (a) to a
38 person or business entity in this state or any other state
39 shall, not less than 21 days prior to delivery of the
40 substance, submit a report of the transaction, which



1 includes the identification information specified in
2 subdivision (c), to the Department of Justice. However,
3 the Department of Justice may authorize the submission
4 of the reports on a monthly basis with respect to repeated,
5 regular transactions between the furnisher and the
6 recipient involving the substance or substances if the
7 Department of Justice determines that the following
8 exist:

9 (1) A pattern of regular supply of the substance or
10 substances exists between the manufacturer, wholesaler,
11 retailer, or other person who sells, transfers, or otherwise
12 furnishes the substance or substances and the recipient of
13 the substance or substances.

14 (2) The recipient has established a record of utilization
15 of the substance or substances for lawful purposes.

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

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

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

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

32 ~~(4) (A) Except as otherwise provided in~~
33 ~~subparagraphs (B) and (C), this section shall not apply to~~
34 ~~any~~

35 (4) (A) Any sale, transfer, furnishing, or receipt of
36 any drug which contains ephedrine, *pseudoephedrine*,
37 *norpseudoephedrine*, or phenylpropanolamine and
38 which is lawfully sold, transferred, or furnished over the
39 counter without a prescription pursuant to the federal
40 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.)



1 or regulations adopted thereunder. *However, this*
 2 *subparagraph shall apply to preparations in solid or liquid*
 3 *dosage form containing ephedrine, pseudoephedrine,*
 4 *norpseudoephedrine, or phenylpropanolamine as the*
 5 *only active medicinal ingredient, or any ephedrine*
 6 *combination preparation. In no instance shall the sale of*
 7 *any product containing ephedrine, pseudoephedrine,*
 8 *norpseudoephedrine, or phenylpropanolamine be*
 9 *greater than six grams in a single transaction.*

10 ~~(B) This section shall apply to preparations in solid~~
 11 ~~dosage form containing ephedrine or~~
 12 ~~phenylpropanolamine as the only active medicinal~~
 13 ~~ingredient.~~

14 ~~(C) This section shall not apply to the sale of ordinary~~
 15 ~~over-the-counter ephedrine or phenylpropanolamine~~
 16 ~~products by retail distributors as defined by this article.~~
 17 ~~However, in no instance shall the sale of any product not~~
 18 ~~defined as ordinary over-the-counter ephedrine or~~
 19 ~~phenylpropanolamine by retail distributors be greater~~
 20 ~~than 24 grams of ephedrine or 24 grams of~~
 21 ~~phenylpropanolamine in a single transaction.~~

22 ~~(D)~~

23 (B) Any ephedrine, pseudoephedrine,
 24 norpseudoephedrine, or phenylpropanolamine product
 25 subsequently removed from exemption pursuant to
 26 Section 814 of Title 21 of the United States Code shall
 27 similarly no longer be exempt from any state reporting or
 28 permitting requirement.

29 (5) Any transfer of a substance specified in subdivision
 30 (a) for purposes of lawful disposal as waste.

31 (f) (1) Any person specified in subdivision (a) or (d)
 32 who does not submit a report as required by that
 33 subdivision or who knowingly submits a report with false
 34 or fictitious information shall be punished by
 35 imprisonment in a county jail not exceeding six months,
 36 by a fine not exceeding five thousand dollars (\$5,000), or
 37 by both the fine and imprisonment.

38 (2) Any person specified in subdivision (a) or (d) who
 39 has previously been convicted of a violation of paragraph
 40 (1) shall, upon a subsequent conviction thereof, be



1 punished by imprisonment in the state prison, or by
2 imprisonment in a county jail not exceeding one year, by
3 a fine not exceeding one hundred thousand dollars
4 (\$100,000), or by both the fine and imprisonment.

5 (g) (1) It is unlawful for any manufacturer,
6 wholesaler, retailer, or other person to sell, transfer, or
7 otherwise furnish a substance specified in subdivision (a)
8 to a person under 18 years of age.

9 (2) It is unlawful for any person under 18 years of age
10 to possess a substance specified in subdivision (a).

11 (3) Notwithstanding any other law, it is unlawful for
12 any retail distributor to (i) sell in a single transaction
13 more than ~~six~~ four packages of a product that he or she
14 knows to contain ephedrine, *pseudoephedrine*,
15 *norpseudoephedrine*, or *phenylpropanolamine*, or (ii)
16 knowingly sell more than ~~24~~ six grams of ephedrine,
17 *pseudoephedrine*, *norpseudoephedrine*, or
18 *phenylpropanolamine*. ~~The six package per transaction~~
19 *Except as otherwise provided in this section, the four*
20 *package per transaction limitation or six gram per*
21 *transaction limitation imposed by this paragraph shall not*
22 apply to any product that is lawfully sold, transferred, or
23 furnished over the counter without a prescription
24 pursuant to the federal Food, Drug, and Cosmetic Act (21
25 U.S.C. Sec. 301 et seq.), or regulations adopted
26 thereunder, and that has been exempted from the
27 requirements of the federal Controlled Substances Act by
28 the federal Drug Enforcement Administration pursuant
29 to Section 814 of Title 21 of the United States Code.

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

31 (h) For the purposes of this article, the following terms
32 have the following meanings:

33 (1) "Drugstore" is any entity described in Code 5912
34 of the Standard Industrial Classification (SIC) Manual
35 published by the United States Office of Management
36 and Budget, 1987 edition.

37 (2) "~~Ephedrine~~" means ~~any drug, substance, or~~
38 ~~compound that contains ephedrine, ephedrine~~
39 ~~hydrochloride, ephedrine sulfate, pseudoephedrine,~~
40 ~~pseudoephedrine hydrochloride, pseudoephedrine~~



1 sulfate, or norpseudoephedrine. “Ephedrine” does not
 2 mean naturally occurring ephedra alkaloids unless they
 3 contain synthetic ephedrine or synthetic
 4 pseudoephedrine.

5 (3)

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

11 (4)

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

16 (5)

17 (4) “Ordinary over-the-counter ephedrine,
 18 *pseudoephedrine*, *norpseudoephedrine*, or
 19 phenylpropanolamine product” means a product
 20 containing ephedrine, *pseudoephedrine*,
 21 *norpseudoephedrine*, or phenylpropanolamine that is
 22 required to be reported pursuant to this article and that
 23 is, if not a liquid, either sold in package sizes of not more
 24 than 3.0 grams of ephedrine base or 3.0 grams of
 25 phenylpropanolamine base *ephedrine*,
 26 *pseudoephedrine*, *norpseudoephedrine*, or
 27 *phenylpropanolamine*, and is packaged in blister packs,
 28 each blister containing not more than two dosage units,
 29 or where the use of blister packs is technically infeasible,
 30 is packaged in unit dose packets or pouches; or, if a liquid,
 31 sold in package sizes of not more than 3.0 grams of
 32 ephedrine base or 3.0 grams of phenylpropanolamine
 33 base. of *ephedrine*, *pseudoephedrine*,
 34 *norpseudoephedrine*, or *phenylpropanolamine*.

35 (6)

36 (5) “Retail distributor” means a grocery store, general
 37 merchandise store, drugstore, or other related entity, the
 38 activities of which, as a distributor of ephedrine,
 39 *pseudoephedrine*, *norpseudoephedrine*, or
 40 phenylpropanolamine products, are limited exclusively

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

10 (7)

11 (6) “Sale for personal use” means the sale in a single
 12 transaction to an individual customer for a legitimate
 13 medical use of a product containing ephedrine,
 14 *pseudoephedrine*, *norpseudoephedrine*, or
 15 phenylpropanolamine in dosages at or below that
 16 specified in paragraph (3) of subdivision (g). “Sale for
 17 personal use” also includes the sale of those products to
 18 employers to be dispensed to employees from first-aid
 19 kits or medicine chests.

20 (i) It is the intent of the Legislature that this section
 21 shall preempt all local ordinances or regulations
 22 governing the sale by a retail distributor of
 23 ~~over-the-counter ephedrine-containing products.~~
 24 *over-the-counter products containing ephedrine,*
 25 *pseudoephedrine, norpseudoephedrine, or*
 26 *phenylpropanolamine.*

27 SEC. 2. No reimbursement is required by this act
 28 pursuant to Section 6 of Article XIII B of the California
 29 Constitution because the only costs that may be incurred
 30 by a local agency or school district will be incurred
 31 because this act creates a new crime or infraction,
 32 eliminates a crime or infraction, or changes the penalty
 33 for a crime or infraction, within the meaning of Section
 34 17556 of the Government Code, or changes the definition
 35 of a crime within the meaning of Section 6 of Article
 36 XIII B of the California Constitution.

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