

**ASSEMBLY BILL**

**No. 1496**

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**Introduced by Assembly Member Olberg**

February 26, 1999

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An act to amend Sections 4034, 4130, 4131, 4132, 4133, 4134, 4135, 4137, 4312, 4331, 4400, and 19170 of, to add Sections 4034.1 and 4130.5 to, and to repeal Section 4136 of, the Business and Professions Code, relating to home medical equipment services providers, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1496, as introduced, Olberg. Home medical equipment services providers.

Existing law, the Pharmacy Law, provides for the licensure and regulation of medical device retailers. A knowing violation of the provisions of the Pharmacy Law is a crime punishable as a misdemeanor or an infraction, as specified.

This bill would instead provide for similar licensure and regulation of home medical equipment services providers, as defined.

The bill would provide for exemption from licensure for enumerated entities.

The bill would require the board to issue a license to an applicant upon receipt of a copy of a valid accreditation letter from a national accreditation body recognized by the board.

Existing law requires certain written policies and procedures to include emergency services.

The bill would additionally require access to emergency services 24 hours per day, 365 days per year to be available for

equipment maintenance or replacement if equipment malfunction may threaten the health of a patient.

The bill would exempt from a licensure fee related to home furnishings a home medical equipment services provider that dispenses or provides hospital beds or wheelchairs pursuant to a prescription from a physician for individual use.

Existing law prohibits certain nonresident medical device retailers from selling or distributing dangerous devices in this state through any person or media other than a licensed wholesaler, without registration, as specified.

This bill would delete that provision.

By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

By creating a new source of funds deposited into the Pharmacy Board Contingent Fund, a continuously appropriated fund, the bill would make an appropriation.

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: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 4034 of the Business and  
 2 Professions Code is amended to read:  
 3 4034. (a) ~~“Medical device retailer”~~—“*Home medical*  
 4 *equipment services provider*” is an area, place, or  
 5 premises, other than a pharmacy, in and from which  
 6 dangerous devices, *if authorized, home medical*  
 7 *equipment, and home medical equipment services* are  
 8 sold, fitted, or dispensed pursuant to prescription.  
 9 ~~“Medical device retailer”~~—“*Home medical equipment*  
 10 *services provider*” includes, but is not limited to, any area,  
 11 place, or premises described in a license issued by the  
 12 board wherein dangerous devices, *if authorized, home*  
 13 *medical equipment and home medical equipment*



1 *services* are stored, possessed, prepared, manufactured,  
2 or repackaged, and from which the dangerous devices, *if*  
3 *authorized, home medical equipment and home medical*  
4 *equipment services* are furnished, sold, or dispensed at  
5 retail.

6 (b) ~~“Medical device retailer”~~ *“Home medical*  
7 *equipment services provider”* shall not include any area  
8 in a facility licensed by the State Department of Health  
9 Services where floor supplies, ward supplies, operating  
10 room supplies, or emergency room supplies of dangerous  
11 devices are stored or possessed solely for treatment of  
12 patients registered for treatment in the facility or for  
13 treatment of patients receiving emergency care in the  
14 facility.

15 (c) ~~“Medical device retailer”~~ *“Home medical*  
16 *equipment services provider”* shall not include any area  
17 of a home health agency licensed under Chapter 8  
18 (commencing with Section 1725) of, or a hospice licensed  
19 under Chapter 8.5 (commencing with Section 1745) of,  
20 Division 2 of the Health and Safety Code, where the  
21 supplies specified in subdivision (c) of Section 4057 are  
22 stored or possessed solely for treatment of patients by a  
23 home health agency or licensed hospice, as long as all  
24 dangerous drugs or devices are furnished to these  
25 patients only upon the prescription or order of a  
26 physician, dentist, or podiatrist.

27 SEC. 2. Section 4034.1 is added to the Business and  
28 Professions Code, to read:

29 4034.1. In addition to the definitions in Section 4034,  
30 all of the following definitions shall apply:

31 (a) *“Home medical equipment services provider”*  
32 means an individual, entity, or corporation engaged in  
33 the business of providing home medical equipment  
34 services, directly or through contractual arrangement, to  
35 an unrelated sick or disabled individual where that  
36 individual resides.

37 (b) *“Home medical equipment services”* means the  
38 delivery, installation, maintenance, replacement of, or  
39 instruction in the use of, home medical equipment used



1 by a sick or disabled individual to allow the individual to  
2 be maintained in a residence.

3 (c) “Home medical equipment” means  
4 technologically sophisticated medical devices usable in a  
5 home care setting, including, but not limited to, all of the  
6 following:

7 (1) Oxygen and oxygen delivery systems.

8 (2) Ventilators.

9 (3) Continuous Positive Airway Pressure devices  
10 (CPAP).

11 (4) Respiratory disease management services.

12 (5) Hospital beds and commodes.

13 (6) Electronic and computer driven wheelchairs and  
14 seating systems.

15 (7) Apnea monitors.

16 (8) Low air loss continuous pressure management  
17 devices.

18 (9) Transcutaneous Electrical Nerve Stimulator  
19 (TENS) units.

20 (10) Dangerous devices, as defined in Section 4022.

21 (11) Distribution of medical gases to end users for  
22 human consumption.

23 (12) Any other similar equipment as defined in  
24 regulations adopted by the board.

25 (d) The term “home medical equipment” does not  
26 include any of the following:

27 (1) Medical equipment used or dispensed in the  
28 normal course of treating patients by hospitals and  
29 nursing facilities, other than medical equipment  
30 delivered or dispensed by a separate unit or subsidiary  
31 corporation of a hospital or nursing facility or agency that  
32 is in the business of delivering home medical equipment  
33 to an individual’s residence.

34 (2) Upper and lower extremity prosthetics and related  
35 orthotics.

36 (3) Canes, crutches, walkers, and bathtub grab bars.

37 (4) Medical equipment provided through a  
38 physician’s office incident to a physician’s service.



1 (5) Equipment provided by a pharmacist that is used  
2 to administer drugs or medicine that can be dispensed  
3 only by a pharmacist.

4 (6) Enteral and parenteral equipment provided by a  
5 pharmacist.

6 SEC. 3. Section 4130 of the Business and Professions  
7 Code is amended to read:

8 4130. (a) No person shall conduct a *home* medical  
9 ~~device—retailer~~ *equipment services provider business* in  
10 the State of California unless he or she has obtained a  
11 license from the board. A license shall be required for  
12 each *home* medical—~~device—retailer~~ *equipment services*  
13 *provider* owned or operated by a specific person. A  
14 separate license shall be required for each of the premises  
15 of any person operating a *home* medical—~~device—retailer~~  
16 *equipment services provider* in more than one location.  
17 The license shall be renewed annually and shall not be  
18 transferable.

19 (b) A warehouse owned by a *home* medical—~~device~~  
20 ~~retailer~~ *equipment services provider*, the primary  
21 purpose of which is storage, not dispensing of dangerous  
22 devices to patients, shall be licensed at a fee one-half of  
23 that for a *home* medical—~~device—retailer~~ *equipment*  
24 *services provider*. There shall be no separate or additional  
25 license fee for warehouse premises owned by a *home*  
26 ~~medical—device—retailer~~ *equipment services provider* that  
27 are physically connected to the retail premises or that  
28 share common access.

29 (c) The board may, at its discretion, issue a temporary  
30 license, when the ownership of a *home* medical—~~device~~  
31 ~~retailer~~ *equipment services provider* is transferred from  
32 one person to another, upon any conditions and for the  
33 periods of time as the board determines to be in the public  
34 interest. A temporary license fee shall be established by  
35 the board at an amount not to exceed the annual fee for  
36 renewal of a license to conduct a *home* medical—~~device~~  
37 ~~retailer~~ *equipment services provider*.

38 (d) Notwithstanding any other provision of law, a  
39 *home* medical—~~device—retailer~~ *equipment services*  
40 *provider* may furnish a prescription device to a licensed



1 health care facility for storage in a secured emergency  
2 pharmaceutical supplies container maintained within the  
3 facility in accordance with facility regulations of the State  
4 Department of Health Services set forth in Title 22 of the  
5 California Code of Regulations.

6 *(e) The licensure requirements of this section shall not*  
7 *apply to the following entities or practitioners, unless the*  
8 *entities or practitioners furnish home medical equipment*  
9 *services through a separate entity, including, but not*  
10 *limited to, a corporate entity, division, or other business*  
11 *entity:*

12 *(1) Home health agencies that do not have a Part B*  
13 *Medicare supplier number.*

14 *(2) Hospitals, excluding providers of home medical*  
15 *equipment that are owned or related to a hospital.*

16 *(3) Manufacturers and wholesale distributors, when*  
17 *not selling directly to the patient.*

18 *(4) Health care practitioners legally eligible to*  
19 *prescribe or order home medical equipment, or who use*  
20 *home medical equipment, or who use home medical*  
21 *equipment to treat their patients, including, but not*  
22 *limited to, physicians, nurses, physical therapists,*  
23 *respiratory therapists, occupational therapists, speech*  
24 *pathologists, optometrists, chiropractors, and podiatrists.*

25 *(5) Pharmacists and pharmacies. Pharmacies that sell*  
26 *or rent home medical equipment shall be governed by*  
27 *other provisions of this chapter and any rules and*  
28 *regulations adopted under this chapter.*

29 *(6) Hospice programs.*

30 *(7) Nursing homes.*

31 *(8) Veterinarians.*

32 *(9) Dentists.*

33 *(10) Emergency medical services.*

34 SEC. 4. Section 4130.5 is added to the Business and  
35 Professions Code, to read:

36 4130.5. Notwithstanding Section 4130, 4131, or 4132, a  
37 licensee applicant may submit documents evidencing  
38 current accreditation through a nationally recognized  
39 program, as determined by the board, including the Joint  
40 Commission on Accreditation of Hospitals. The board



1 shall issue a license upon receipt of a copy of a valid  
2 accreditation letter from a national accreditation body  
3 recognized by the board.

4 SEC. 5. Section 4131 of the Business and Professions  
5 Code is amended to read:

6 4131. (a) The following minimum standards shall  
7 apply to all *home medical—device—retailer equipment*  
8 *services providers* licensed by the board:

9 (1) Each ~~retailer~~ *licensee* shall store dangerous  
10 devices in a secure, lockable area.

11 (2) Each ~~retailer~~ *licensee* shall maintain the premises,  
12 fixtures, and equipment in a clean and orderly condition.  
13 ~~The premises shall be~~

14 (3) *Each licensee shall maintain the premises in a dry,*  
15 *well-ventilated, and have condition, free from rodents*  
16 *and insects, and with adequate lighting.*

17 (b) The board may, by regulation, impose any other  
18 minimum standards pertaining to acquisition, storage,  
19 and maintenance of dangerous devices or other goods, or  
20 to maintenance, or condition of the licensed premises of  
21 any *home medical—device—retailer equipment services*  
22 *providers* as the board determines are reasonably  
23 necessary.

24 SEC. 6. Section 4132 of the Business and Professions  
25 Code is amended to read:

26 4132. (a) Each *home medical—device—retailer*  
27 *equipment services provider* shall have written policies  
28 and procedures related to *home medical—device—retailer*  
29 *equipment services provider* handling and, *if authorized*  
30 *by the board pursuant to Section 4133, the dispensing of*  
31 dangerous devices. Those written policies and  
32 procedures shall include, but not be limited to:

33 (1) Training of staff, patients, and caregivers.

34 (2) Cleaning, storage, and maintenance of ~~dangerous~~  
35 ~~devices and home medical~~ equipment.

36 (3) Emergency services. *If equipment malfunction*  
37 *may threaten a patient's health, access to emergency*  
38 *services 24 hours per day, 365 days per year shall be*  
39 *available for equipment maintenance or replacement.*

40 (4) Recordkeeping requirements.



1 (5) Storage and security requirements.

2 (6) Quality assurance.

3 (b) The ~~medical device retailer~~ *home medical*  
4 *equipment services provider* shall make consultation  
5 available to the patient or primary caregiver about  
6 proper use of ~~dangerous~~ devices and related supplies  
7 furnished by the *home medical* ~~device retailer~~  
8 *equipment services provider*. The *home medical* ~~device~~  
9 ~~retailer~~ *equipment services provider* shall notify the  
10 patient or primary care giver that consultation is  
11 available.

12 (c) Each ~~retailer licensee~~ shall ensure all personnel of  
13 the *home medical* ~~device retailer~~ *equipment services*  
14 *provider* who engage in the taking of orders for, the  
15 selling of, or the fitting of dangerous devices, *if authorized*  
16 *by the board pursuant to Section 4133*, shall have training  
17 and demonstrate initial and continuing competence in  
18 the order-taking, fitting, and sale of dangerous devices  
19 that the *home medical* ~~device retailer~~ *equipment*  
20 *services provider* furnishes *pursuant to Section 4133*. The  
21 pharmacist-in-charge or exemptee shall be jointly  
22 responsible with the owner or owners of the *home*  
23 *medical* ~~device retailer~~ *equipment services provider* for  
24 compliance with the requirement.

25 (d) Each ~~retailer licensee~~ shall prepare and maintain  
26 records of training and demonstrated competence for  
27 each individual employed or retained by the ~~retailer~~  
28 *licensee*. The records shall be maintained for three years  
29 from and after the last date of employment.

30 (e) Each ~~retailer licensee~~ shall have an ongoing,  
31 documented quality assurance program that includes,  
32 but is not limited to, the following:

33 (1) Monitoring personnel performance.

34 (2) Storage, maintenance, and dispensing of  
35 dangerous devices.

36 (f) The records and documents specified in  
37 subdivisions (a) and (e) shall be maintained for three  
38 years from the date of making. The records and  
39 documents in subdivisions (a), (d), and (e), shall be, at



1 all times during business hours, open to inspection by  
2 authorized officers of the law.

3 SEC. 7. Section 4133 of the Business and Professions  
4 Code is amended to read:

5 4133. Section 4051 shall not prohibit a *home* medical  
6 ~~device-retailer~~ *equipment services provider* from selling  
7 or dispensing dangerous devices if the board finds that  
8 sufficient qualified supervision is employed by the *home*  
9 ~~medical-device-retailer~~ *equipment services provider* to  
10 adequately safeguard and protect the public health. Each  
11 person applying for an exemption shall meet the  
12 following requirements to obtain and maintain that  
13 exemption:

14 (a) The *home* ~~medical-device-retailer~~ *equipment*  
15 *services provider* shall be in charge of a pharmacist or an  
16 exempt person who has taken and passed an examination  
17 administered by the board and whose certificate of  
18 exemption is currently valid.

19 (b) The pharmacist or exempt person shall be on the  
20 premises at all times dangerous devices are available for  
21 sale or fitting unless dangerous devices are stored  
22 separately from other merchandise and are under the  
23 exclusive control of the pharmacist or exemptee. A  
24 pharmacist or an exemptee need not be present in the  
25 warehouse facility of a *home* ~~medical-device-retailer~~  
26 *equipment services provider* unless the board establishes  
27 that requirement by regulation based upon the need to  
28 protect the public.

29 (c) The board may require an exempt person to  
30 complete a designated number of hours of coursework in  
31 board-approved courses of home health education as a  
32 condition in connection with any disciplinary action  
33 taken against the exempt person.

34 (d) Each premises maintained by a *home* medical  
35 ~~device-retailer~~ *equipment services provider* shall have a  
36 license issued by the board and shall have a pharmacist or  
37 exempt person on the premises if dangerous devices are  
38 furnished, sold, or dispensed.

39 (e) A *home* ~~medical-device-retailer~~ *equipment*  
40 *services provider* may establish locked storage (a lock box



1 or locked area) for emergency or after working hours  
2 furnishing of dangerous devices. Locked storage may be  
3 installed or placed in a service vehicle of the *home*  
4 ~~medical—device—retailer~~ *equipment services provider* for  
5 emergency or after hours service to patients having  
6 prescriptions for dangerous devices.

7 (f) The board may, by regulation, authorize a  
8 pharmacist or exempt person to direct an employee of the  
9 *home medical device—retailer equipment services*  
10 *provider* who operates the service vehicle equipped with  
11 locked storage described in subdivision (e) to deliver a  
12 dangerous device from the locked storage to patients  
13 having prescriptions for dangerous devices. These  
14 regulations shall establish inventory requirements for the  
15 locked storage by a pharmacist or exempt person to take  
16 place shortly after a dangerous device has been delivered  
17 from the locked storage to a patient.

18 SEC. 8. Section 4134 of the Business and Professions  
19 Code is amended to read:

20 4134. (a) No person other than a pharmacist, an  
21 intern pharmacist, an exempt person, as specified in  
22 Section 4133, or an authorized officer of the law or a  
23 person authorized to prescribe, shall be permitted in that  
24 area, place, or premises described in the license issued by  
25 the board wherein dangerous devices as therein defined  
26 are stored, possessed, prepared, manufactured, or  
27 repacked, except that a pharmacist or exemptee shall be  
28 responsible for any individual who enters the *home*  
29 ~~medical—device—retailer~~ *equipment services provider* for  
30 the purposes of receiving fitting or consultation from the  
31 pharmacist or exemptee or any person performing  
32 clerical, inventory control, housekeeping, delivery,  
33 maintenance, or similar functions relating to the *home*  
34 ~~medical—device—retailer~~ *equipment services provider*. The  
35 pharmacist or exemptee shall remain present in the *home*  
36 ~~medical—device—retailer~~ *equipment services provider* any  
37 time an individual is present who is seeking a fitting or  
38 consultation. However, an exemptee need not be present  
39 on the premises of a *home medical—device—retailer*  
40 *equipment services provider* at all times of operation and



1 need not be present in a warehouse facility owned by a  
2 *home medical—device—retailer equipment services*  
3 *provider* unless the board establishes that requirement by  
4 regulation based upon the need to protect the public. The  
5 exemptee need not be present if the dangerous devices  
6 are stored in a secure locked area, under the exclusive  
7 control of the exemptee, and unavailable for dispensing.  
8 *This subdivision shall apply only to dangerous devices, as*  
9 *defined in Section 4022.*

10 (b) A “warehouse” as used in this section, is a facility  
11 owned by a *home medical—device—retailer equipment*  
12 *services provider* that is used for storage only. There shall  
13 be no fitting, display, or sales at the location. A pharmacist  
14 or exemptee shall be designated as “in charge” of a  
15 warehouse but need not be present during operation. The  
16 pharmacist or exemptee may permit others to possess a  
17 key to the warehouse.

18 (c) Notwithstanding the remainder of this section, a  
19 medical device retailer may establish a locked facility,  
20 meeting the requirements of Section 4133, for furnishing  
21 dangerous devices to patients having prescriptions for  
22 dangerous devices in emergencies or after working hours.

23 (d) The board may by regulation establish reasonable  
24 security measures consistent with this section in order to  
25 prevent unauthorized persons from gaining access to the  
26 area, place, or premises, or to the dangerous devices  
27 therein.

28 (e) The board may by regulation establish a list of  
29 those dangerous devices that may be maintained,  
30 dispensed, sold, or furnished only by a pharmacist in a  
31 pharmacy. In establishing or modifying that list, the  
32 board shall consider factors, including, but not limited to:

33 (1) The potential for abuse or spread of illness.

34 (2) The danger to the public if the device is not so  
35 restricted.

36 (3) The potential danger to minors if the device is not  
37 so restricted.

38 (f) The board may, by regulation, establish labeling  
39 requirements for dangerous devices sold, fitted, or  
40 dispensed by a *home medical—device—retailer equipment*



1 *services provider* as it deems necessary for the protection  
2 of the public.

3 SEC. 9. Section 4135 of the Business and Professions  
4 Code is amended to read:

5 4135. ~~Dangerous devices and~~ *Home medical*  
6 *equipment* for rental purposes shall, at all times while  
7 under control of the *home medical device retailer*  
8 *equipment services provider*, be maintained in a clean  
9 and sanitary condition and in good working order,  
10 following, where available, manufacturer specifications.

11 SEC. 10. Section 4136 of the Business and Professions  
12 Code is repealed.

13 ~~4136. (a) A nonresident medical device retailer shall~~  
14 ~~not sell or distribute dangerous devices in this state~~  
15 ~~through any person or media other than a wholesaler who~~  
16 ~~is licensed pursuant to this chapter without registering as~~  
17 ~~a nonresident medical device retailer.~~

18 ~~(b) Applications for a nonresident medical device~~  
19 ~~retailer registration shall be made on a form furnished by~~  
20 ~~the board. The board may require any information it~~  
21 ~~deems reasonably necessary to carry out the purposes of~~  
22 ~~this section.~~

23 ~~(c) The Legislature, by enacting this section, does not~~  
24 ~~intend a license issued to any nonresident medical device~~  
25 ~~retailer pursuant to this section to change or affect the tax~~  
26 ~~liability imposed by Chapter 3 (commencing with~~  
27 ~~Section 23501) of Part 11 of Division 2 of the Revenue and~~  
28 ~~Taxation Code on any nonresident medical device~~  
29 ~~retailer.~~

30 ~~(d) The Legislature, by enacting this section, does not~~  
31 ~~intend a registration issued to any nonresident medical~~  
32 ~~device retailer pursuant to this section to serve as any~~  
33 ~~evidence that the nonresident medical device retailer is~~  
34 ~~doing business within this state.~~

35 SEC. 11. Section 4137 of the Business and Professions  
36 Code is amended to read:

37 4137. When, in the opinion of the board, a high  
38 standard of patient safety, consistent with good patient  
39 care, can be provided by the licensure of a *home medical*  
40 ~~device retailer equipment services provider~~ that does not



1 meet all of the requirements for licensure as a *home*  
2 ~~medical—device—retailer~~ *equipment services provider*, the  
3 board may waive any licensing requirements.

4 SEC. 12. Section 4312 of the Business and Professions  
5 Code is amended to read:

6 4312. (a) The board may void the license of a  
7 wholesaler, pharmacy, *home* ~~medical—device—retailer~~  
8 *equipment services provider*, or veterinary food-animal  
9 drug retailer if the licensed premises remains closed, as  
10 defined in subdivision (e), other than by order of the  
11 board. For good cause shown, the board may void a  
12 license after a shorter period of closure. To void a license  
13 pursuant to this subdivision, the board shall make a  
14 diligent, good faith effort to give notice by personal  
15 service on the licensee. If no written objection is received  
16 within 10 days after personal service is made or a diligent,  
17 good faith effort to give notice by personal service on the  
18 licensee has failed, the board may void the license without  
19 the necessity of a hearing. If the licensee files a written  
20 objection, the board shall file an accusation based on the  
21 licensee remaining closed. Proceedings shall be  
22 conducted in accordance with Chapter 5 (commencing  
23 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
24 Government Code, and the board shall have all the  
25 powers granted in that chapter.

26 (b) In the event that the license of a wholesaler,  
27 pharmacy, *home* ~~medical—device—retailer~~ *equipment*  
28 *services provider*, or veterinary food-animal drug retailer  
29 is voided pursuant to subdivision (a) or revoked pursuant  
30 to Article 9 (commencing with Section 4300), or a  
31 wholesaler, pharmacy, *home* ~~medical—device—retailer~~  
32 *equipment services provider*, or veterinary food-animal  
33 drug retailer, notifies the board of its intent to remain  
34 closed or to discontinue business, the licensee shall,  
35 within 10 days thereafter, arrange for the transfer of all  
36 dangerous drugs and controlled substances or dangerous  
37 devices to another licensee authorized to possess the  
38 dangerous drugs and controlled substances or dangerous  
39 devices. The licensee transferring the dangerous drugs  
40 and controlled substances or dangerous devices shall

1 immediately confirm in writing to the board that the  
2 transfer has taken place.

3 (c) If a wholesaler, pharmacy, *home medical—device*  
4 ~~retailer~~ *equipment services provider*, or veterinary  
5 food-animal drug retailer fails to comply with subdivision  
6 (b), the board may seek and obtain an order from the  
7 superior court in the county in which the wholesaler,  
8 pharmacy, *home medical—device—retailer* *equipment*  
9 *services provider*, or veterinary food-animal drug retailer  
10 is located, authorizing the board to enter the wholesaler,  
11 pharmacy, *home medical—device—retailer* *equipment*  
12 *services provider*, or veterinary food-animal drug retailer  
13 and inventory and store, transfer, sell, or arrange for the  
14 sale of, all dangerous drugs and controlled substances and  
15 dangerous devices found in the wholesaler, pharmacy,  
16 medical device retailer, or veterinary food-animal drug  
17 retailer.

18 (d) In the event that the board sells or arranges for the  
19 sale of any dangerous drugs, controlled substances, or  
20 dangerous devices pursuant to subdivision (c), the board  
21 may retain from the proceeds of the sale an amount equal  
22 to the cost to the board of obtaining and enforcing an  
23 order issued pursuant to subdivision (c), including the  
24 cost of disposing of the dangerous drugs, controlled  
25 substances, or dangerous devices. The remaining  
26 proceeds, if any, shall be returned to the licensee from  
27 whose premises the dangerous drugs or controlled  
28 substances or dangerous devices were removed.

29 (1) The licensee shall be notified of his or her right to  
30 the remaining proceeds by personal service or by  
31 certified mail, postage prepaid.

32 (2) Where a statute or regulation requires the licensee  
33 to file with the board his or her address, and any change  
34 of address, the notice required by this subdivision may be  
35 sent by certified mail, postage prepaid, to the latest  
36 address on file with the board and service of notice in this  
37 manner shall be deemed completed on the 10th day after  
38 the mailing.

39 (3) If the licensee is notified as provided in this  
40 subdivision, and the licensee fails to contact the board for



1 the remaining proceeds within 30 calendar days after  
2 personal service has been made or service by certified  
3 mail, postage prepaid, is deemed completed, the  
4 remaining proceeds shall be deposited by the board into  
5 the Pharmacy Board Contingent Fund. These deposits  
6 shall be deemed to have been received pursuant to  
7 Chapter 7 (commencing with Section 1500) of Title 10 of  
8 Part 3 of the Code of Civil Procedure and shall be subject  
9 to claim or other disposition as provided in that chapter.

10 (e) For the purposes of this section, “closed” means  
11 not engaged in the ordinary activity for which a license  
12 has been issued for at least one day each calendar week  
13 during any 120-day period.

14 (f) Nothing in this section shall be construed as  
15 requiring a pharmacy to be open seven days a week.

16 SEC. 13. Section 4331 of the Business and Professions  
17 Code is amended to read:

18 4331. (a) Any person who is neither a pharmacist nor  
19 an exemptee and who takes charge of a *home* medical  
20 ~~device-retailer~~ *equipment services provider*, wholesaler,  
21 or veterinary food-animal drug retailer or who dispenses  
22 a prescription or furnishes dangerous devices except as  
23 otherwise provided in this chapter is guilty of a  
24 misdemeanor.

25 (b) Any person who has obtained a license to conduct  
26 a *home* medical—~~device-retailer~~ *equipment services*  
27 *provider* and who fails to place in charge of that *home*  
28 ~~medical—device-retailer~~ *equipment services provider* a  
29 pharmacist or exemptee, or any person who, by himself  
30 or herself, or by any other person, permits the  
31 compounding or dispensing of prescriptions, except by a  
32 pharmacist or exemptee, or as otherwise provided in this  
33 chapter, is guilty of a misdemeanor.

34 (c) Any person who has obtained a license to conduct  
35 a veterinary food-animal drug retailer and who fails to  
36 place in charge of that veterinary food-animal drug  
37 retailer a pharmacist or exemptee, or any person who, by  
38 himself or herself, or by any other person, permits the  
39 dispensing of prescriptions, except by a pharmacist or



1 exemptee, or as otherwise provided in this chapter, is  
2 guilty of a misdemeanor.

3 (d) Any person who has obtained a license to conduct  
4 a wholesaler and who fails to place in charge of that  
5 wholesaler a pharmacist or exemptee, or any person who,  
6 by himself or herself, or by any other person, permits the  
7 dispensing of prescriptions, except by a pharmacist or  
8 exemptee, or as otherwise provided in this chapter, is  
9 guilty of a misdemeanor.

10 SEC. 14. Section 4400 of the Business and Professions  
11 Code is amended to read:

12 4400. The amount of fees and penalties prescribed by  
13 this chapter, except as otherwise provided, is that fixed by  
14 the board according to the following schedule:

15 (a) (1) The fee for a nongovernmental pharmacy  
16 license shall be three hundred forty dollars (\$340) and  
17 may be increased to four hundred dollars (\$400).

18 (2) The fee for a *home medical—device—retailer*  
19 *equipment services provider* license shall not exceed the  
20 fee for a nongovernmental pharmacy license.

21 (b) The fee for a nongovernmental pharmacy or  
22 medical device retailer annual renewal shall be one  
23 hundred seventy-five dollars (\$175) and may be  
24 increased to two hundred fifty dollars (\$250).

25 (c) The fee for processing remodeling plans and  
26 inspecting a remodeled pharmacy shall be one hundred  
27 thirty dollars (\$130) and may be increased to one  
28 hundred seventy-five dollars (\$175).

29 (d) The fee for the pharmacist examination shall be  
30 one hundred fifty-five dollars (\$155) and may be  
31 increased to one hundred eighty-five dollars (\$185).

32 (e) The fee for regrading an examination shall be  
33 seventy-five dollars (\$75) and may be increased to  
34 eighty-five dollars (\$85). If an error in grading is found  
35 and the applicant passes the examination, the regrading  
36 fee shall be refunded.

37 (f) The fee for a pharmacist license and biennial  
38 renewal shall be one hundred fifteen dollars (\$115) and  
39 may be increased to one hundred fifty dollars (\$150).



1 (g) The fee for a wholesaler license and annual  
2 renewal shall be five hundred fifty dollars (\$550) and may  
3 be increased to six hundred dollars (\$600).

4 (h) The fee for a hypodermic license and renewal shall  
5 be ninety dollars (\$90) and may be increased to one  
6 hundred twenty-five dollars (\$125).

7 (i) The fee for examination and investigation for an  
8 exemptee license under Sections 4053 and 4054 shall be  
9 seventy-five dollars (\$75) and may be increased to one  
10 hundred dollars (\$100), except for a veterinary  
11 food-animal drug retailer exemptee, for whom the fee  
12 shall be one hundred dollars (\$100).

13 (j) The fee for an exemptee license and annual  
14 renewal under Sections 4053 and 4054 shall be one  
15 hundred ten dollars (\$110) and may be increased to one  
16 hundred fifty dollars (\$150), except that the fee for the  
17 issuance of a veterinary food-animal drug retailer  
18 exemptee license shall be one hundred fifty dollars  
19 (\$150), for renewal one hundred ten dollars (\$110),  
20 which may be increased to one hundred fifty dollars  
21 (\$150), and for filing a late renewal fifty-five dollars (\$55).

22 (k) The fee for an out-of-state drug distributor's  
23 license and annual renewal issued pursuant to Section  
24 4120 shall be five hundred fifty dollars (\$550) and may be  
25 increased to six hundred dollars (\$600).

26 (l) The fee for registration and annual renewal of  
27 providers of continuing education shall be one hundred  
28 dollars (\$100) and may be increased to one hundred  
29 thirty dollars (\$130).

30 (m) The fee for evaluation of continuing education  
31 courses for accreditation shall be set by the board at an  
32 amount not to exceed forty dollars (\$40) per course hour.

33 (n) The fee for evaluation of applications submitted by  
34 graduates of foreign colleges of pharmacy or colleges of  
35 pharmacy not recognized by the board shall be one  
36 hundred sixty-five dollars (\$165) and may be increased to  
37 one hundred seventy-five dollars (\$175).

38 (o) The fee for an intern license or extension shall be  
39 sixty-five dollars (\$65) and may be increased to  
40 seventy-five dollars (\$75). The fee for transfer of intern



1 hours or verification of licensure to another state shall be  
2 fixed by the board not to exceed twenty dollars (\$20).

3 (p) The board may, by regulation, provide for the  
4 waiver or refund of the additional fee for the issuance of  
5 a certificate where the certificate is issued less than 45  
6 days before the next succeeding regular renewal date.

7 (q) The fee for the reissuance of any license, or  
8 renewal thereof, that has been lost or destroyed or  
9 reissued due to a name change is thirty dollars (\$30).

10 (r) The fee for the reissuance of any license, or  
11 renewal thereof, that must be reissued because of a  
12 change in the information, is sixty dollars (\$60) and may  
13 be increased to one hundred dollars (\$100).

14 (s) It is the intent of the Legislature that, in setting fees  
15 pursuant to this section, the board shall seek to maintain  
16 a reserve in the Pharmacy Board Contingent Fund equal  
17 to approximately one year's operating expenditures.

18 (t) The fee for any applicant for a clinic permit is three  
19 hundred forty dollars (\$340) and may be increased to four  
20 hundred dollars (\$400) for each permit. The annual fee  
21 for renewal of the permit is one hundred seventy-five  
22 dollars (\$175) and may be increased to two hundred fifty  
23 dollars (\$250) for each permit.

24 (u) The board shall charge a fee for the processing and  
25 issuance of a registration to a pharmacy technician and a  
26 separate fee for the biennial renewal of the registration.  
27 The registration fee shall be twenty-five dollars (\$25) and  
28 may be increased to fifty dollars (\$50). The biennial  
29 renewal fee shall be twenty-five dollars (\$25) and may be  
30 increased to fifty dollars (\$50).

31 (v) The fee for a veterinary food-animal drug retailer  
32 license shall be four hundred dollars (\$400). The annual  
33 renewal fee for a veterinary food-animal drug retailer  
34 shall be two hundred fifty dollars (\$250).

35 (w) The fee for issuance of a retired license pursuant  
36 to Section 4200.5 shall be thirty dollars (\$30).

37 SEC. 15. Section 19170 of the Business and Professions  
38 Code is amended to read:

39 19170. (a) The fee imposed for the issuance and for  
40 the biennial renewal of each license granted under this



1 chapter shall be set by the chief, with the approval of the  
2 director, at a sum not more nor less than that shown in the  
3 following table:

	Maximum	Minimum
	fee	fee
7 Importer’s license .....	\$540	\$120
8 Furniture and bedding manufacturer’s		
9 license .....	540	120
10 Wholesale furniture and bedding		
11 dealer’s license .....	540	120
12 Supply dealer’s license .....	540	120
13 Custom upholsterer’s license .....	360	80
14 Sanitizer’s license .....	360	80
15 Retail furniture and bedding dealer’s		
16 license .....	240	40
17 Retail furniture dealer’s license .....	120	20
18 Retail bedding dealer’s license .....	120	20

19  
20 (b) Individuals who, in their own homes and without  
21 the employment of any other person, make, sell,  
22 advertise, or contract to make pillows, quilts, quilted  
23 pads, or comforters are exempt from the fee  
24 requirements imposed by subdivision (a). However,  
25 these individuals shall comply with all other provisions of  
26 this chapter.

27 (c) Retailers who only sell “used” and “antique”  
28 furniture as defined in Sections 19008.1 and 19008.2 are  
29 exempt from the fee requirements imposed by  
30 subdivision (a). Those retailers are also exempt from the  
31 other provisions of this chapter.

32 (d) A person who makes, sells, or advertises  
33 upholstered furniture and bedding as defined in Sections  
34 19006 and 19007, and who also makes, sells, or advertises  
35 furniture used exclusively for the purpose of physical  
36 fitness and exercise, shall comply with the fee  
37 requirements imposed by subdivision (a).

38 (e) It is the intent of the Legislature that upon the  
39 enactment of the amendments to this section, the two  
40 hundred twenty-four thousand dollars (\$224,000)



1 unallocated reduction proposed in the 1993–94  
2 Governor’s Budget shall be restored to the Bureau of  
3 Home Furnishings and Thermal Insulation Fund.

4 *(f) Any entity licensed as a home medical equipment*  
5 *services provider pursuant to Section 4130 that dispenses*  
6 *or provides hospital beds or wheelchairs pursuant to a*  
7 *prescription from a physician for individual use, shall be*  
8 *exempt from the fee requirement imposed by subdivision*  
9 *(a).*

10 SEC. 16. No reimbursement is required by this act  
11 pursuant to Section 6 of Article XIII B of the California  
12 Constitution because the only costs that may be incurred  
13 by a local agency or school district will be incurred  
14 because this act creates a new crime or infraction,  
15 eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section  
17 17556 of the Government Code, or changes the definition  
18 of a crime within the meaning of Section 6 of Article  
19 XIII B of the California Constitution.

