

AMENDED IN SENATE JUNE 28, 1999
AMENDED IN ASSEMBLY APRIL 14, 1999
CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1496

Introduced by Assembly Member Olberg

February 26, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1496, as amended, 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.

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, *and provide for specified enforcement of provisions governing their dispensation or provision by the Board of Pharmacy.*

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) “Home medical equipment services
4 provider” is an area, place, or premises, other than a
5 pharmacy, in and from which dangerous devices, if
6 authorized, home medical equipment, and home medical
7 equipment services are sold, fitted, or dispensed pursuant
8 to prescription. “Home medical equipment services
9 provider” includes, but is not limited to, any area, place,
10 or premises described in a license issued by the board
11 wherein dangerous devices, if authorized, home medical
12 equipment and home medical equipment services are
13 stored, possessed, prepared, manufactured, or
14 repackaged, and from which the dangerous devices, if



1 authorized, home medical equipment and home medical
2 equipment services are furnished, sold, or dispensed at
3 retail.

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

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

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

25 4034.1. In addition to the definitions in Section 4034,
26 all of the following definitions shall apply:

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

33 (b) “Home medical equipment services” means the
34 delivery, installation, maintenance, replacement of, or
35 instruction in the use of, home medical equipment used
36 by a sick or disabled individual to allow the individual to
37 be maintained in a residence.

38 (c) “Home medical equipment” means
39 technologically sophisticated medical devices usable in a



- 1 home care setting, including, but not limited to, all of the
 2 following:
- 3 (1) Oxygen and oxygen delivery systems.
 - 4 (2) Ventilators.
 - 5 (3) Continuous Positive Airway Pressure devices
 - 6 (CPAP).
 - 7 (4) Respiratory disease management services.
 - 8 (5) Hospital beds and commodes.
 - 9 (6) Electronic and computer driven wheelchairs and
 - 10 seating systems.
 - 11 (7) Apnea monitors.
 - 12 (8) Low air loss continuous pressure management
 - 13 devices.
 - 14 (9) Transcutaneous Electrical Nerve Stimulator
 - 15 (TENS) units.
 - 16 (10) Dangerous devices, as defined in Section 4022.
 - 17 (11) Distribution of medical gases to end users for
 - 18 human consumption.
 - 19 (12) *Disposable medical supplies.*
 - 20 (13) Any other similar equipment as defined in
 - 21 regulations adopted by the board.
- 22 (d) The term “home medical equipment” does not
 23 include any of the following:
- 24 (1) Medical equipment used or dispensed in the
 - 25 normal course of treating patients by hospitals and
 - 26 nursing facilities, other than medical equipment
 - 27 delivered or dispensed by a separate unit or subsidiary
 - 28 corporation of a hospital or nursing facility or agency that
 - 29 is in the business of delivering home medical equipment
 - 30 to an individual’s residence.
 - 31 ~~(2) Upper and lower extremity prosthetics and related~~
 - 32 (2) *Prosthetics and* orthotics.
 - 33 (3) Canes, crutches, walkers, and bathtub grab bars.
 - 34 (4) Medical equipment provided through a
 - 35 physician’s office incident to a physician’s service.
 - 36 (5) Equipment provided by a pharmacist that is used
 - 37 to administer drugs or medicine that can be dispensed
 - 38 only by a pharmacist.
 - 39 (6) Enteral and parenteral equipment provided by a
 - 40 pharmacist.



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

3 4130. (a) No person shall conduct a home medical
4 equipment services provider business in the State of
5 California unless he or she has obtained a license from the
6 board. A license shall be required for each home medical
7 equipment services provider owned or operated by a
8 specific person. A separate license shall be required for
9 each of the premises of any person operating a home
10 medical equipment services provider in more than one
11 location. The license shall be renewed annually and shall
12 not be transferable.

13 (b) A warehouse owned by a home medical
14 equipment services provider, the primary purpose of
15 which is storage, not dispensing of dangerous devices to
16 patients, shall be licensed at a fee one-half of that for a
17 home medical equipment services provider. There shall
18 be no separate or additional license fee for warehouse
19 premises owned by a home medical equipment services
20 provider that are physically connected to the retail
21 premises or that share common access.

22 (c) The board may, at its discretion, issue a temporary
23 license, when the ownership of a home medical
24 equipment services provider is transferred from one
25 person to another, upon any conditions and for the
26 periods of time as the board determines to be in the public
27 interest. A temporary license fee shall be established by
28 the board at an amount not to exceed the annual fee for
29 renewal of a license to conduct a home medical
30 equipment services provider.

31 (d) Notwithstanding any other provision of law, a
32 home medical equipment services provider may furnish
33 a prescription device to a licensed health care facility for
34 storage in a secured emergency pharmaceutical supplies
35 container maintained within the facility in accordance
36 with facility regulations of the State Department of
37 Health Services set forth in Title 22 of the California Code
38 of Regulations.

39 (e) The licensure requirements of this section shall not
40 apply to the following entities or practitioners, unless the



1 entities or practitioners furnish home medical equipment
2 services through a separate entity, including, but not
3 limited to, a corporate entity, division, or other business
4 entity:

5 (1) Home health agencies that do not have a Part B
6 Medicare supplier number.

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

9 (3) Manufacturers and wholesale distributors, when
10 not selling directly to the patient.

11 (4) Health care practitioners legally eligible to
12 prescribe or order home medical equipment, or who use
13 home medical equipment, or who use home medical
14 equipment to treat their patients, including, but not
15 limited to, physicians, nurses, physical therapists,
16 respiratory therapists, occupational therapists, speech
17 pathologists, optometrists, chiropractors, and podiatrists.

18 (5) Pharmacists and pharmacies. Pharmacies that sell
19 or rent home medical equipment shall be governed by
20 other provisions of this chapter and any rules and
21 regulations adopted under this chapter.

22 (6) Hospice programs.

23 (7) Nursing homes.

24 (8) Veterinarians.

25 (9) Dentists.

26 (10) Emergency medical services.

27 SEC. 4. *Section 4130.5 is added to the Business and*
28 *Professions Code, to read:*

29 *4130.5. Notwithstanding any other provision of law,*
30 *the board shall enforce any statutory provisions*
31 *governing the dispensation or provision of hospital beds*
32 *or wheelchairs pursuant to a prescription from a*
33 *physician for individual use, and shall regulate any entity*
34 *licensed as a home medical equipment provider pursuant*
35 *to Section 4130 as necessary for the purpose of enforcing*
36 *those provisions.*

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



1 4131. (a) The following minimum standards shall
2 apply to all home medical equipment services providers
3 licensed by the board:

4 (1) Each licensee shall store dangerous devices in a
5 secure, lockable area.

6 (2) Each licensee shall maintain the premises, fixtures,
7 and equipment in a clean and orderly condition.

8 (3) Each licensee shall maintain the premises in a dry,
9 well-ventilated condition, free from rodents and insects,
10 and with adequate lighting.

11 (b) The board may, by regulation, impose any other
12 minimum standards pertaining to acquisition, storage,
13 and maintenance of dangerous devices or other goods, or
14 to maintenance, or condition of the licensed premises of
15 any home medical equipment services providers as the
16 board determines are reasonably necessary.

17 ~~SEC. 5.~~

18 *SEC. 6.* Section 4132 of the Business and Professions
19 Code is amended to read:

20 4132. (a) Each home medical equipment services
21 provider shall have written policies and procedures
22 related to home medical equipment services provider
23 handling and, if authorized by the board pursuant to
24 Section 4133, the dispensing of dangerous devices. Those
25 written policies and procedures shall include, but not be
26 limited to:

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

28 (2) Cleaning, storage, and maintenance of home
29 medical equipment.

30 (3) Emergency services. If equipment malfunction
31 may threaten a patient's health, access to emergency
32 services 24 hours per day, 365 days per year shall be
33 available for equipment maintenance or replacement.

34 (4) Recordkeeping requirements.

35 (5) Storage and security requirements.

36 (6) Quality assurance.

37 (b) The home medical equipment services provider
38 shall make consultation available to the patient or
39 primary caregiver about proper use of devices and
40 related supplies furnished by the home medical



1 equipment services provider. The home medical
2 equipment services provider shall notify the patient or
3 primary caregiver that consultation is available.

4 (c) Each licensee shall ensure all personnel of the
5 home medical equipment services provider who engage
6 in the taking of orders for, the selling of, or the fitting of
7 dangerous devices, if authorized by the board pursuant to
8 Section 4133, shall have training and demonstrate initial
9 and continuing competence in the order-taking, fitting,
10 and sale of dangerous devices that the home medical
11 equipment services provider furnishes pursuant to
12 Section 4133. The pharmacist-in-charge or exemptee shall
13 be jointly responsible with the owner or owners of the
14 home medical equipment services provider for
15 compliance with the requirement.

16 (d) Each licensee shall prepare and maintain records
17 of training and demonstrated competence for each
18 individual employed or retained by the licensee. The
19 records shall be maintained for three years from and after
20 the last date of employment.

21 (e) Each licensee shall have an ongoing, documented
22 quality assurance program that includes, but is not
23 limited to, the following:

24 (1) Monitoring personnel performance.

25 (2) Storage, maintenance, and dispensing of
26 dangerous devices.

27 (f) The records and documents specified in
28 subdivisions (a) and (e) shall be maintained for three
29 years from the date of making. The records and
30 documents in subdivisions (a), (d), and (e), shall be, at
31 all times during business hours, open to inspection by
32 authorized officers of the law.

33 ~~SEC. 6.~~

34 *SEC. 7.* Section 4133 of the Business and Professions
35 Code is amended to read:

36 4133. Section 4051 shall not prohibit a home medical
37 equipment services provider from selling or dispensing
38 dangerous devices if the board finds that sufficient
39 qualified supervision is employed by the home medical
40 equipment services provider to adequately safeguard and



1 protect the public health. Each person applying for an
2 exemption shall meet the following requirements to
3 obtain and maintain that exemption:

4 (a) The home medical equipment services provider
5 shall be in charge of a pharmacist or an exempt person
6 who has taken and passed an examination administered
7 by the board and whose certificate of exemption is
8 currently valid.

9 (b) The pharmacist or exempt person shall be on the
10 premises at all times dangerous devices are available for
11 sale or fitting unless dangerous devices are stored
12 separately from other merchandise and are under the
13 exclusive control of the pharmacist or exemptee. A
14 pharmacist or an exemptee need not be present in the
15 warehouse facility of a home medical equipment services
16 provider unless the board establishes that requirement by
17 regulation based upon the need to protect the public.

18 (c) The board may require an exempt person to
19 complete a designated number of hours of coursework in
20 board-approved courses of home health education as a
21 condition in connection with any disciplinary action
22 taken against the exempt person.

23 (d) Each premises maintained by a home medical
24 equipment services provider shall have a license issued by
25 the board and shall have a pharmacist or exempt person
26 on the premises if dangerous devices are furnished, sold,
27 or dispensed.

28 (e) A home medical equipment services provider may
29 establish locked storage (a lock box or locked area) for
30 emergency or after working hours furnishing of
31 dangerous devices. Locked storage may be installed or
32 placed in a service vehicle of the home medical
33 equipment services provider for emergency or after
34 hours service to patients having prescriptions for
35 dangerous devices.

36 (f) The board may, by regulation, authorize a
37 pharmacist or exempt person to direct an employee of the
38 home medical equipment services provider who operates
39 the service vehicle equipped with locked storage
40 described in subdivision (e) to deliver a dangerous device



1 from the locked storage to patients having prescriptions
2 for dangerous devices. These regulations shall establish
3 inventory requirements for the locked storage by a
4 pharmacist or exempt person to take place shortly after
5 a dangerous device has been delivered from the locked
6 storage to a patient.

7 ~~SEC. 7.~~

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

10 4134. (a) No person other than a pharmacist, an
11 intern pharmacist, an exempt person, as specified in
12 Section 4133, or an authorized officer of the law or a
13 person authorized to prescribe, shall be permitted in that
14 area, place, or premises described in the license issued by
15 the board wherein dangerous devices as therein defined
16 are stored, possessed, prepared, manufactured, or
17 repacked, except that a pharmacist or exemptee shall be
18 responsible for any individual who enters the home
19 medical equipment services provider for the purposes of
20 receiving fitting or consultation from the pharmacist or
21 exemptee or any person performing clerical, inventory
22 control, housekeeping, delivery, maintenance, or similar
23 functions relating to the home medical equipment
24 services provider. The pharmacist or exemptee shall
25 remain present in the home medical equipment services
26 provider any time an individual is present who is seeking
27 a fitting or consultation. However, an exemptee need not
28 be present on the premises of a home medical equipment
29 services provider at all times of operation and need not
30 be present in a warehouse facility owned by a home
31 medical equipment services provider unless the board
32 establishes that requirement by regulation based upon
33 the need to protect the public. The exemptee need not
34 be present if the dangerous devices are stored in a secure
35 locked area, under the exclusive control of the exemptee,
36 and unavailable for dispensing. This subdivision shall
37 apply only to dangerous devices, as defined in Section
38 4022.

39 (b) A “warehouse” as used in this section, is a facility
40 owned by a home medical equipment services provider



1 that is used for storage only. There shall be no fitting,
2 display, or sales at the location. A pharmacist or exemptee
3 shall be designated as “in charge” of a warehouse but
4 need not be present during operation. The pharmacist or
5 exemptee may permit others to possess a key to the
6 warehouse.

7 (c) Notwithstanding the remainder of this section, a
8 ~~medical—device—retailer~~ *home medical equipment*
9 *services provider* may establish a locked facility, meeting
10 the requirements of Section 4133, for furnishing
11 dangerous devices to patients having prescriptions for
12 dangerous devices in emergencies or after working hours.

13 (d) The board may by regulation establish reasonable
14 security measures consistent with this section in order to
15 prevent unauthorized persons from gaining access to the
16 area, place, or premises, or to the dangerous devices
17 therein.

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

- 23 (1) The potential for abuse or spread of illness.
24 (2) The danger to the public if the device is not so
25 restricted.
26 (3) The potential danger to minors if the device is not
27 so restricted.

28 (f) The board may, by regulation, establish labeling
29 requirements for dangerous devices sold, fitted, or
30 dispensed by a home medical equipment services
31 provider as it deems necessary for the protection of the
32 public.

33 ~~SEC. 8.~~

34 *SEC. 9.* Section 4135 of the Business and Professions
35 Code is amended to read:

36 4135. Home medical equipment for rental purposes
37 shall, at all times while under control of the home medical
38 equipment services provider, be maintained in a clean
39 and sanitary condition and in good working order,
40 following, where available, manufacturer specifications.



1 ~~SEC. 9.~~

2 *SEC. 10.* Section 4136 of the Business and Professions
3 Code is amended to read:

4 4136. (a) A nonresident home medical equipment
5 services provider shall not sell or distribute dangerous
6 devices in this state through any person or media other
7 than a wholesaler who is licensed pursuant to this chapter
8 without registering as a nonresident home medical
9 equipment services provider.

10 (b) Applications for a nonresident home medical
11 equipment services provider registration shall be made
12 on a form furnished by the board. The board may require
13 any information it deems reasonably necessary to carry
14 out the purposes of this section.

15 (c) The Legislature, by enacting this section, does not
16 intend a license issued to any nonresident home medical
17 equipment services provider pursuant to this section to
18 change or affect the tax liability imposed by Chapter 3
19 (commencing with Section 23501) of Part 11 of Division
20 2 of the Revenue and Taxation Code on any nonresident
21 home medical equipment services provider.

22 (d) The Legislature, by enacting this section, does not
23 intend a registration issued to any nonresident home
24 medical equipment services provider pursuant to this
25 section to serve as any evidence that the nonresident
26 home medical equipment services provider is doing
27 business within this state.

28 ~~SEC. 10.~~

29 *SEC. 11.* Section 4137 of the Business and Professions
30 Code is amended to read:

31 4137. When, in the opinion of the board, a high
32 standard of patient safety, consistent with good patient
33 care, can be provided by the licensure of a home medical
34 equipment services provider that does not meet all of the
35 requirements for licensure as a home medical equipment
36 services provider, the board may waive any licensing
37 requirements.

38 ~~SEC. 11.~~

39 *SEC. 12.* Section 4312 of the Business and Professions
40 Code is amended to read:



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

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

38 (c) If a wholesaler, pharmacy, home medical
39 equipment services provider, or veterinary food-animal
40 drug retailer fails to comply with subdivision (b), the



1 board may seek and obtain an order from the superior
2 court in the county in which the wholesaler, pharmacy,
3 home medical equipment services provider, or
4 veterinary food-animal drug retailer is located,
5 authorizing the board to enter the wholesaler, pharmacy,
6 home medical equipment services provider, or
7 veterinary food-animal drug retailer and inventory and
8 store, transfer, sell, or arrange for the sale of, all dangerous
9 drugs and controlled substances and dangerous devices
10 found in the wholesaler, pharmacy, home medical
11 equipment services provider, or veterinary food-animal
12 drug retailer.

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

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

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

34 (3) If the licensee is notified as provided in this
35 subdivision, and the licensee fails to contact the board for
36 the remaining proceeds within 30 calendar days after
37 personal service has been made or service by certified
38 mail, postage prepaid, is deemed completed, the
39 remaining proceeds shall be deposited by the board into
40 the Pharmacy Board Contingent Fund. These deposits



1 shall be deemed to have been received pursuant to
2 Chapter 7 (commencing with Section 1500) of Title 10 of
3 Part 3 of the Code of Civil Procedure and shall be subject
4 to claim or other disposition as provided in that chapter.

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

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

11 ~~SEC. 12.~~

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

14 4331. (a) Any person who is neither a pharmacist nor
15 an exemptee and who takes charge of a home medical
16 equipment services provider, wholesaler, or veterinary
17 food-animal drug retailer or who dispenses a prescription
18 or furnishes dangerous devices except as otherwise
19 provided in this chapter is guilty of a misdemeanor.

20 (b) Any person who has obtained a license to conduct
21 a home medical equipment services provider and who
22 fails to place in charge of that home medical equipment
23 services provider a pharmacist or exemptee, or any
24 person who, by himself or herself, or by any other person,
25 permits the compounding or dispensing of prescriptions,
26 except by a pharmacist or exemptee, or as otherwise
27 provided in this chapter, is guilty of a misdemeanor.

28 (c) Any person who has obtained a license to conduct
29 a veterinary food-animal drug retailer and who fails to
30 place in charge of that veterinary food-animal drug
31 retailer a pharmacist or exemptee, or any person who, by
32 himself or herself, or by any other person, permits the
33 dispensing of prescriptions, except by a pharmacist or
34 exemptee, or as otherwise provided in this chapter, is
35 guilty of a misdemeanor.

36 (d) Any person who has obtained a license to conduct
37 a wholesaler and who fails to place in charge of that
38 wholesaler a pharmacist or exemptee, or any person who,
39 by himself or herself, or by any other person, permits the
40 dispensing of prescriptions, except by a pharmacist or



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

3 ~~SEC. 13.~~

4 *SEC. 14.* Section 4400 of the Business and Professions
5 Code is amended to read:

6 4400. The amount of fees and penalties prescribed by
7 this chapter, except as otherwise provided, is that fixed by
8 the board according to the following schedule:

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

12 (2) The fee for a home medical equipment services
13 provider license shall not exceed the fee for a
14 nongovernmental pharmacy license.

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

19 (c) The fee for processing remodeling plans and
20 inspecting a remodeled pharmacy shall be one hundred
21 thirty dollars (\$130) and may be increased to one
22 hundred seventy-five dollars (\$175).

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

26 (e) The fee for regrading an examination shall be
27 seventy-five dollars (\$75) and may be increased to
28 eighty-five dollars (\$85). If an error in grading is found
29 and the applicant passes the examination, the regrading
30 fee shall be refunded.

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

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

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



1 (i) The fee for examination and investigation for an
2 exemptee license under Sections 4053 and 4054 shall be
3 seventy-five dollars (\$75) and may be increased to one
4 hundred dollars (\$100), except for a veterinary
5 food-animal drug retailer exemptee, for whom the fee
6 shall be one hundred dollars (\$100).

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

16 (k) The fee for an out-of-state drug distributor's
17 license and annual renewal issued pursuant to Section
18 4120 shall be five hundred fifty dollars (\$550) and may be
19 increased to six hundred dollars (\$600).

20 (l) The fee for registration and annual renewal of
21 providers of continuing education shall be one hundred
22 dollars (\$100) and may be increased to one hundred
23 thirty dollars (\$130).

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

27 (n) The fee for evaluation of applications submitted by
28 graduates of foreign colleges of pharmacy or colleges of
29 pharmacy not recognized by the board shall be one
30 hundred sixty-five dollars (\$165) and may be increased to
31 one hundred seventy-five dollars (\$175).

32 (o) The fee for an intern license or extension shall be
33 sixty-five dollars (\$65) and may be increased to
34 seventy-five dollars (\$75). The fee for transfer of intern
35 hours or verification of licensure to another state shall be
36 fixed by the board not to exceed twenty dollars (\$20).

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



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

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

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

12 (t) The fee for any applicant for a clinic permit is three
13 hundred forty dollars (\$340) and may be increased to four
14 hundred dollars (\$400) for each permit. The annual fee
15 for renewal of the permit is one hundred seventy-five
16 dollars (\$175) and may be increased to two hundred fifty
17 dollars (\$250) for each permit.

18 (u) The board shall charge a fee for the processing and
19 issuance of a registration to a pharmacy technician and a
20 separate fee for the biennial renewal of the registration.
21 The registration fee shall be twenty-five dollars (\$25) and
22 may be increased to fifty dollars (\$50). The biennial
23 renewal fee shall be twenty-five dollars (\$25) and may be
24 increased to fifty dollars (\$50).

25 (v) The fee for a veterinary food-animal drug retailer
26 license shall be four hundred dollars (\$400). The annual
27 renewal fee for a veterinary food-animal drug retailer
28 shall be two hundred fifty dollars (\$250).

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

31 ~~SEC. 14.~~

32 *SEC. 15.* Section 19170 of the Business and Professions
33 Code is amended to read:

34 19170. (a) The fee imposed for the issuance and for
35 the biennial renewal of each license granted under this
36 chapter shall be set by the chief, with the approval of the
37 director, at a sum not more nor less than that shown in the
38 following table:

39



	Maximum fee	Minimum fee
1		
2		
3	\$540	\$120
4		
5	540	120
6		
7	540	120
8	540	120
9	360	80
10	360	80
11		
12	240	40
13	120	20
14	120	20

15
16 (b) Individuals who, in their own homes and without
17 the employment of any other person, make, sell,
18 advertise, or contract to make pillows, quilts, quilted
19 pads, or comforters are exempt from the fee
20 requirements imposed by subdivision (a). However,
21 these individuals shall comply with all other provisions of
22 this chapter.

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

28 (d) A person who makes, sells, or advertises
29 upholstered furniture and bedding as defined in Sections
30 19006 and 19007, and who also makes, sells, or advertises
31 furniture used exclusively for the purpose of physical
32 fitness and exercise, shall comply with the fee
33 requirements imposed by subdivision (a).

34 (e) It is the intent of the Legislature that upon the
35 enactment of the amendments to this section, the two
36 hundred twenty-four thousand dollars (\$224,000)
37 unallocated reduction proposed in the 1993–94
38 Governor’s Budget shall be restored to the Bureau of
39 Home Furnishings and Thermal Insulation Fund.



1 (f) Any entity licensed as a home medical equipment
2 services provider pursuant to Section 4130 that dispenses
3 or provides hospital beds or wheelchairs pursuant to a
4 prescription from a physician for individual use, shall be
5 exempt from the fee requirement imposed by subdivision
6 (a), *and shall not be subject to regulation by the Bureau*
7 *of Home Furnishings and Thermal Insulation pursuant to*
8 *any statute governing dispensing or providing hospital*
9 *beds or wheelchairs pursuant to a prescription from a*
10 *physician for individual use.*

11 ~~SEC. 15.~~

12 *SEC. 16. (a) Any entity that holds a current, valid*
13 *license as a medical device retailer on January 1, 2000,*
14 *shall be deemed to be a licensed home medical*
15 *equipment services provider until January 1, 2001, or*
16 *until the renewal date of the license, whichever occurs*
17 *first, provided the entity is in compliance with all*
18 *applicable criteria for obtaining a license as a home*
19 *medical equipment services provider.*

20 *(b) Any entity that was not required to obtain a license*
21 *as a medical device retailer in order to provide*
22 *equipment or services prior to January 1, 2000, and that*
23 *is required to obtain a license as a home medical*
24 *equipment services provider pursuant to this act, shall*
25 *apply for a license as a home medical equipment services*
26 *provider by July 1, 2000; however, the requirement for*
27 *licensure shall only apply to those entities on and after*
28 *January 1, 2001.*

29 *SEC. 17. No reimbursement is required by this act*
30 *pursuant to Section 6 of Article XIII B of the California*
31 *Constitution because the only costs that may be incurred*
32 *by a local agency or school district will be incurred*
33 *because this act creates a new crime or infraction,*
34 *eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section*
36 *17556 of the Government Code, or changes the definition*
37 *of a crime within the meaning of Section 6 of Article*
38 *XIII B of the California Constitution.*

O

