

AMENDED IN SENATE FEBRUARY 15, 2000
AMENDED IN SENATE SEPTEMBER 10, 1999
AMENDED IN SENATE AUGUST 23, 1999
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 ~~Granlund~~ Olberg

February 26, 1999

An act to ~~add Section 43024 to the Health and Safety Code, relating to motor vehicle fuel; amend Sections 4034, 4130, 4131, 4132, 4133, 4134, 4135, 4136, 4137, 4312, 4331, 4400, 19051, 19055, and 19059.5 of, and to add Section 4034.1 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, ~~Granlund~~ Olberg. ~~Motor vehicle fuel; MTBE~~ 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 also exempt a home medical equipment services provider from specified licensing provisions related to home furnishings.

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.

~~The Governor's Executive Order D-5-99 requires the State Energy Resources Conservation and Development Commission, in consultation with the State Air Resources Board, to develop a timetable for the removal of methyl tertiary butyl ether (MTBE) from gasoline at the earliest possible date, but not later than December 31, 2002.~~

~~This bill would require the commission to submit quarterly reports to the Legislature summarizing the amount of MTBE used in gasoline by each refinery during the preceding quarter and comparing that amount to the amount of MTBE used in gasoline by each refinery during the previous quarter.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

- 1 SECTION 1. ~~Section 43024 is added to the Health and~~
- 2 ~~Safety Code, to read:~~



1 ~~43024. Notwithstanding Section 7550.5 of the~~
2 ~~Government Code, commencing April 1, 2000, the State~~
3 ~~Energy Resources Conservation and Development~~
4 ~~Commission shall submit quarterly reports to the~~
5 ~~Legislature summarizing the amount of methyl tertiary~~
6 ~~butyl ether (MTBE) used in gasoline in this state by each~~
7 ~~refinery during the preceding quarter and comparing~~
8 ~~that amount to the amount of MTBE used in gasoline by~~
9 ~~each refinery during the previous quarter.~~

10 *SECTION 1. Section 4034 of the Business and*
11 *Professions Code is amended to read:*

12 4034. (a) ~~“Medical device retailer”~~ *“Home medical*
13 *equipment services provider”* is an area, place, or
14 premises, other than a pharmacy, in and from which
15 dangerous devices *if authorized, home medical*
16 *equipment, and home medical equipment services* are
17 sold, fitted, or dispensed pursuant to prescription.
18 ~~“Medical device retailer”~~ *“Home medical equipment*
19 *services provider”* includes, but is not limited to, any area,
20 place, or premises described in a license issued by the
21 board ~~wherein~~ *in which* dangerous devices, *if authorized,*
22 *home medical equipment, and home medical equipment*
23 *services* are stored, possessed, prepared, manufactured,
24 or repackaged, and from which the dangerous devices, *if*
25 *authorized, home medical equipment, and home medical*
26 *equipment services* are furnished, sold, or dispensed at
27 retail.

28 (b) ~~“Medical device retailer”~~ *“Home medical*
29 *equipment services provider”* shall not include any area
30 in a facility licensed by the State Department of Health
31 Services where floor supplies, ward supplies, operating
32 room supplies, or emergency room supplies of dangerous
33 devices are stored or possessed solely for treatment of
34 patients registered for treatment in the facility or for
35 treatment of patients receiving emergency care in the
36 facility.

37 (c) ~~“Medical device retailer”~~ *“Home medical*
38 *equipment services provider”* shall not include any area
39 of a home health agency licensed under Chapter 8
40 (commencing with Section 1725) of, or a hospice licensed



1 under Chapter 8.5 (commencing with Section 1745) of,
2 Division 2 of the Health and Safety Code, where the
3 supplies specified in subdivision (c) of Section 4057 are
4 stored or possessed solely for treatment of patients by a
5 home health agency or licensed hospice, as long as all
6 dangerous drugs or devices are furnished to these
7 patients only upon the prescription or order of a
8 physician, dentist, or podiatrist.

9 *SEC. 2. Section 4034.1 is added to the Business and*
10 *Professions Code, to read:*

11 *4034.1. In addition to the definitions in Section 4034,*
12 *all of the following definitions shall apply:*

13 (a) *“Home medical equipment services provider”*
14 *means an individual, entity, or corporation engaged in*
15 *the business of providing home medical equipment*
16 *services, directly or through contractual arrangement, to*
17 *an unrelated sick or disabled individual where that*
18 *individual resides.*

19 (b) *“Home medical equipment services” means the*
20 *delivery, installation, maintenance, replacement of, or*
21 *instruction in the use of, home medical equipment used*
22 *by a sick or disabled individual to allow the individual to*
23 *be maintained in a residence.*

24 (c) *“Home medical equipment” means*
25 *technologically sophisticated medical devices usable in a*
26 *home care setting, including, but not limited to, all of the*
27 *following:*

28 (1) *Oxygen and oxygen delivery systems.*

29 (2) *Ventilators.*

30 (3) *Continuous Positive Airway Pressure devices*
31 *(CPAP).*

32 (4) *Respiratory disease management services.*

33 (5) *Hospital beds and commodes.*

34 (6) *Electronic and computer driven wheelchairs and*
35 *seating systems.*

36 (7) *Apnea monitors.*

37 (8) *Low air loss continuous pressure management*
38 *devices.*

39 (9) *Transcutaneous Electrical Nerve Stimulator*
40 *(TENS) units.*



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

2 (11) Distribution of medical gases to end users for
3 human consumption.

4 (12) Disposable medical supplies.

5 (13) Any other similar equipment as defined in
6 regulations adopted by the board.

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

9 (1) Medical equipment used or dispensed in the
10 normal course of treating patients by hospitals and
11 nursing facilities, other than medical equipment
12 delivered or dispensed by a separate unit or subsidiary
13 corporation of a hospital or nursing facility or agency that
14 is in the business of delivering home medical equipment
15 to an individual’s residence.

16 (2) Prosthetics and orthotics.

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

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

20 (5) Equipment provided by a pharmacist that is used
21 to administer drugs or medicine that can be dispensed
22 only by a pharmacist.

23 (6) Enteral and parenteral equipment provided by a
24 pharmacist.

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

27 4130. (a) No person shall conduct a ~~medical device~~
28 ~~retailer~~ home medical equipment services provider
29 business in the State of California unless he or she has
30 obtained a license from the board. A license shall be
31 required for each ~~medical device retailer~~ home medical
32 equipment services provider owned or operated by a
33 specific person. A separate license shall be required for
34 each of the premises of any person operating a ~~medical~~
35 ~~device retailer~~ home medical equipment services
36 provider in more than one location. The license shall be
37 renewed annually and shall not be transferable.

38 (b) A warehouse owned by a ~~medical device retailer~~
39 home medical equipment services provider, the primary
40 purpose of which is storage, not dispensing of dangerous



1 devices to patients, shall be licensed at a fee one-half of
2 that for a ~~medical device retailer~~ *home medical*
3 *equipment services provider*. There shall be no separate
4 or additional license fee for warehouse premises owned
5 by a ~~medical device retailer~~ *home medical equipment*
6 *services provider* that are physically connected to the
7 retail premises or that share common access.

8 (c) The board may, at its discretion, issue a temporary
9 license, when the ownership of a ~~medical device retailer~~
10 *home medical equipment services provider* is transferred
11 from one person to another, upon any conditions and for
12 the periods of time as the board determines to be in the
13 public interest. A temporary license fee shall be
14 established by the board at an amount not to exceed the
15 annual fee for renewal of a license to conduct a ~~medical~~
16 ~~device retailer~~ *home medical equipment services*
17 *provider*.

18 (d) Notwithstanding any other provision of law, a
19 ~~medical device retailer~~ *home medical equipment*
20 *services provider* may furnish a prescription device to a
21 licensed health care facility for storage in a secured
22 emergency pharmaceutical supplies container
23 maintained within the facility in accordance with facility
24 regulations of the State Department of Health Services
25 set forth in Title 22 of the California Code of Regulations.

26 (e) *The licensure requirements of this section shall not*
27 *apply to the following entities or practitioners, unless the*
28 *entities or practitioners furnish home medical equipment*
29 *services through a separate entity, including, but not*
30 *limited to, a corporate entity, division, or other business*
31 *entity:*

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

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

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

38 (4) *Health care practitioners legally eligible to*
39 *prescribe or order home medical equipment, or who use*
40 *home medical equipment, or who use home medical*



1 *equipment to treat their patients, including, but not*
2 *limited to, physicians, nurses, physical therapists,*
3 *respiratory therapists, occupational therapists, speech*
4 *pathologists, optometrists, chiropractors, and podiatrists.*

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

9 (6) *Hospice programs.*

10 (7) *Nursing homes.*

11 (8) *Veterinarians.*

12 (9) *Dentists.*

13 (10) *Emergency medical services.*

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

16 4131. (a) The following minimum standards shall
17 apply to all ~~medical device retailers~~ *home medical*
18 *equipment services providers* licensed by the board:

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

21 (2) Each ~~retailer~~ *licensee* shall maintain the premises,
22 fixtures, and equipment in a clean and orderly condition.

23 ~~The premises shall be dry, well-ventilated, and have~~

24 (3) *Each licensee shall maintain the premises in a dry,*
25 *well-ventilated condition, free from rodents and insects,*
26 *and with adequate lighting.*

27 (b) The board may, by regulation, impose any other
28 minimum standards pertaining to *the* acquisition,
29 storage, and maintenance of dangerous devices or other
30 goods, or to *the* maintenance, or condition of the licensed
31 premises of any ~~medical device retailer~~ *home medical*
32 *equipment services providers* as the board determines
33 are reasonably necessary.

34 *SEC. 5. Section 4132 of the Business and Professions*
35 *Code is amended to read:*

36 4132. (a) Each ~~medical device retailer~~ *home medical*
37 *equipment services provider* shall have written policies
38 and procedures related to ~~medical device retailer~~ *home*
39 *medical equipment services provider* handling and, if
40 *authorized by the board pursuant to Section 4133, the*



1 dispensing of dangerous devices. Those written policies
 2 and procedures shall include, but not be limited to:

3 (1) Training of staff, patients, and caregivers.
 4 (2) Cleaning, storage, and maintenance of ~~dangerous~~
 5 ~~devices and~~ *home medical* equipment.
 6 (3) Emergency services. *If equipment malfunction*
 7 *may threaten a patient's health, access to emergency*
 8 *services 24 hours per day, 365 days per year shall be*
 9 *available for equipment maintenance or replacement.*

10 (4) Recordkeeping requirements.
 11 (5) Storage and security requirements.
 12 (6) Quality assurance.

13 (b) The ~~medical—device—retailer~~ *home medical*
 14 *equipment services provider* shall make consultation
 15 available to the patient or primary caregiver about
 16 proper use of ~~dangerous~~ devices and related supplies
 17 furnished by the ~~medical—device—retailer~~. ~~The medical~~
 18 ~~device—retailer~~ *home medical equipment services*
 19 *provider. The home medical equipment services*
 20 *provider* shall notify the patient or primary care giver
 21 that consultation is available.

22 (c) Each ~~retailer licensee~~ shall ensure all personnel of
 23 the ~~medical—device—retailer~~ *home medical equipment*
 24 *services provider* who engage in the taking of orders for,
 25 the selling of, or the fitting of dangerous devices, *if*
 26 *authorized by the board pursuant to Section 4133*, shall
 27 have training and demonstrate initial and continuing
 28 competence in the order-taking, fitting, and sale of
 29 dangerous devices that the ~~medical—device—retailer~~ *home*
 30 *medical equipment services provider* furnishes pursuant
 31 to *Section 4133*. The pharmacist-in-charge or exemptee
 32 shall be jointly responsible with the owner or owners of
 33 the ~~medical—device—retailer~~ *home medical equipment*
 34 *services provider* for compliance with the requirement.

35 (d) Each ~~retailer licensee~~ shall prepare and maintain
 36 records of training and demonstrated competence for
 37 each individual employed or retained by the ~~retailer~~
 38 *licensee*. The records shall be maintained for three years
 39 from and after the last date of employment.



1 (e) Each ~~retailer~~ *licensee* shall have an ongoing,
2 documented quality assurance program that includes,
3 but is not limited to, the following:

4 (1) Monitoring personnel performance.

5 (2) Storage, maintenance, and dispensing of
6 dangerous devices.

7 (f) The records and documents specified in
8 subdivisions (a) and (e) shall be maintained for three
9 years from the date of making. The records and
10 documents in subdivisions (a), (d), and (e), shall be, at
11 all times during business hours, open to inspection by
12 authorized officers of the law.

13 *SEC. 6. Section 4133 of the Business and Professions*
14 *Code is amended to read:*

15 4133. Section 4051 shall not prohibit a ~~medical-device~~
16 ~~retailer~~ *home medical equipment services provider* from
17 selling or dispensing dangerous devices if the board finds
18 that sufficient qualified supervision is employed by the
19 ~~medical-device-retailer~~ *home medical equipment*
20 *services provider* to adequately safeguard and protect the
21 public health. Each person applying for an exemption
22 shall meet the following requirements to obtain and
23 maintain that exemption:

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

29 (b) The pharmacist or exempt person shall be on the
30 premises at all times dangerous devices are available for
31 sale or fitting unless dangerous devices are stored
32 separately from other merchandise and are under the
33 exclusive control of the pharmacist or exemptee. A
34 pharmacist or an exemptee need not be present in the
35 warehouse facility of a ~~medical-device-retailer~~ *home*
36 *medical equipment services provider* unless the board
37 establishes that requirement by regulation based upon
38 the need to protect the public.

39 (c) The board may require an exempt person to
40 complete a designated number of hours of coursework in



1 board-approved courses of home health education as a
2 condition in connection with any disciplinary action
3 taken against the exempt person.

4 (d) Each premises maintained by a ~~medical device~~
5 ~~retailer~~ *home medical equipment services provider* shall
6 have a license issued by the board and shall have a
7 pharmacist or exempt person on the premises if
8 dangerous devices are furnished, sold, or dispensed.

9 (e) A ~~medical device retailer~~ *home medical*
10 *equipment services provider* may establish locked
11 storage (a lock box or locked area) for emergency or after
12 working hours furnishing of dangerous devices. Locked
13 storage may be installed or placed in a service vehicle of
14 the ~~medical device retailer~~ *home medical equipment*
15 *services provider* for emergency or after hours service to
16 patients having prescriptions for dangerous devices.

17 (f) The board may, by regulation, authorize a
18 pharmacist or exempt person to direct an employee of the
19 ~~medical device retailer~~ *home medical equipment*
20 *services provider* who operates the service vehicle
21 equipped with locked storage described in subdivision
22 (e) to deliver a dangerous device from the locked storage
23 to patients having prescriptions for dangerous devices.
24 These regulations shall establish inventory requirements
25 for the locked storage by a pharmacist or exempt person
26 to take place shortly after a dangerous device has been
27 delivered from the locked storage to a patient.

28 *SEC. 7. Section 4134 of the Business and Professions*
29 *Code is amended to read:*

30 4134. (a) No person other than a pharmacist, an
31 intern pharmacist, an exempt person, as specified in
32 Section 4133, or an authorized officer of the law or a
33 person authorized to prescribe, shall be permitted in that
34 area, place, or premises described in the license issued by
35 the board wherein dangerous devices as therein defined
36 are stored, possessed, prepared, manufactured, or
37 repacked, except that a pharmacist or exemptee shall be
38 responsible for any individual who enters the ~~medical~~
39 ~~device retailer~~ *home medical equipment services*
40 *provider* for the purposes of receiving fitting or



1 consultation from the pharmacist or exemptee or any
2 person performing clerical, inventory control,
3 housekeeping, delivery, maintenance, or similar
4 functions relating to the ~~medical device retailer~~ *home*
5 *medical equipment services provider*. The pharmacist or
6 exemptee shall remain present in the ~~medical device~~
7 ~~retailer~~ *home medical equipment services provider* any
8 time an individual is present who is seeking a fitting or
9 consultation. However, an exemptee need not be present
10 on the premises of a ~~medical device retailer~~ *home*
11 *medical equipment services provider* at all times of
12 operation and need not be present in a warehouse facility
13 owned by a ~~medical device retailer~~ *home medical*
14 *equipment services provider* unless the board establishes
15 that requirement by regulation based upon the need to
16 protect the public. The exemptee need not be present if
17 the dangerous devices are stored in a secure locked area,
18 under the exclusive control of the exemptee, and
19 unavailable for dispensing. *This subdivision shall apply*
20 *only to dangerous devices, as defined in Section 4022.*

21 (b) A “warehouse” as used in this section, is a facility
22 owned by a ~~medical device retailer~~ *home medical*
23 *equipment services provider* that is used for storage only.
24 There shall be no fitting, display, or sales at the location.
25 A pharmacist or exemptee shall be designated as “in
26 charge” of a warehouse but need not be present during
27 operation. The pharmacist or exemptee may permit
28 others to possess a key to the warehouse.

29 (c) Notwithstanding the remainder of this section, a
30 ~~medical device retailer~~ *home medical equipment*
31 *services provider* may establish a locked facility, meeting
32 the requirements of Section 4133, for furnishing
33 dangerous devices to patients having prescriptions for
34 dangerous devices in emergencies or after working hours.

35 (d) The board may by regulation establish reasonable
36 security measures consistent with this section in order to
37 prevent unauthorized persons from gaining access to the
38 area, place, or premises, or to the dangerous devices
39 therein.



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

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

7 (2) The danger to the public if the device is not so
8 restricted.

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

11 (f) The board may, by regulation, establish labeling
12 requirements for dangerous devices sold, fitted, or
13 dispensed by a ~~medical device retailer~~ *home medical*
14 *equipment services provider* as it deems necessary for the
15 protection of the public.

16 *SEC. 8. Section 4135 of the Business and Professions*
17 *Code is amended to read:*

18 4135. ~~Dangerous devices and~~ *Home medical*
19 *equipment for rental purposes shall, at all times while*
20 *under control of the* ~~medical device retailer~~ *home*
21 *medical equipment services provider*, be maintained in
22 a clean and sanitary condition and in good working order,
23 following, where available, manufacturer specifications.

24 *SEC. 9. Section 4136 of the Business and Professions*
25 *Code is amended to read:*

26 4136. (a) A nonresident ~~medical device retailer~~
27 *home medical equipment services provider* shall not sell
28 or distribute dangerous devices in this state through any
29 person or media other than a wholesaler who is licensed
30 pursuant to this chapter without registering as a
31 nonresident ~~medical device retailer~~ *home medical*
32 *equipment services provider*.

33 (b) Applications for a nonresident ~~medical device~~
34 ~~retailer~~ *home medical equipment services provider*
35 registration shall be made on a form furnished by the
36 board. The board may require any information it deems
37 reasonably necessary to carry out the purposes of this
38 section.

39 (c) The Legislature, by enacting this section, does not
40 intend a license issued to any nonresident ~~medical device~~



1 ~~retailer~~ home medical equipment services provider
2 pursuant to this section to change or affect the tax liability
3 imposed by Chapter 3 (commencing with Section 23501)
4 of Part 11 of Division 2 of the Revenue and Taxation Code
5 on any nonresident ~~medical device retailer~~ home medical
6 equipment services provider.

7 (d) The Legislature, by enacting this section, does not
8 intend a registration issued to any nonresident ~~medical~~
9 ~~device retailer~~ home medical equipment services
10 provider pursuant to this section to serve as any evidence
11 that the nonresident ~~medical device retailer~~ home
12 medical equipment services provider is doing business
13 within this state.

14 *SEC. 10. Section 4137 of the Business and Professions*
15 *Code is amended to read:*

16 4137. When, in the opinion of the board, a high
17 standard of patient safety, consistent with good patient
18 care, can be provided by the licensure of a ~~medical device~~
19 ~~retailer~~ home medical equipment services provider that
20 does not meet all of the requirements for licensure as a
21 ~~medical device retailer~~ home medical equipment
22 services provider, the board may waive any licensing
23 requirements.

24 *SEC. 11. Section 4312 of the Business and Professions*
25 *Code is amended to read:*

26 4312. (a) The board may void the license of a
27 wholesaler, pharmacy, ~~medical device retailer~~ home
28 medical equipment services provider, or veterinary
29 food-animal drug retailer if the licensed premises remains
30 closed, as defined in subdivision (e), other than by order
31 of the board. For good cause shown, the board may void
32 a license after a shorter period of closure. To void a license
33 pursuant to this subdivision, the board shall make a
34 diligent, good faith effort to give notice by personal
35 service on the licensee. If no written objection is received
36 within 10 days after personal service is made or a diligent,
37 good faith effort to give notice by personal service on the
38 licensee has failed, the board may void the license without
39 the necessity of a hearing. If the licensee files a written
40 objection, the board shall file an accusation based on the



1 licensee remaining closed. Proceedings shall be
2 conducted in accordance with Chapter 5 (commencing
3 with Section 11500) of Part 1 of Division 3 of Title 2 of the
4 Government Code, and the board shall have all the
5 powers granted in that chapter.

6 (b) In the event that the license of a wholesaler,
7 pharmacy, ~~medical—device—retailer~~ *home medical*
8 *equipment services provider*, or veterinary food-animal
9 drug retailer is voided pursuant to subdivision (a) or
10 revoked pursuant to Article 9 ~~19~~ (commencing with
11 Section 4300), or a wholesaler, pharmacy, ~~medical—device~~
12 ~~retailer~~ *home medical equipment services provider*, or
13 veterinary food-animal drug retailer, notifies the board of
14 its intent to remain closed or to discontinue business, the
15 licensee shall, within 10 days thereafter, arrange for the
16 transfer of all dangerous drugs and controlled substances
17 or dangerous devices to another licensee authorized to
18 possess the dangerous drugs and controlled substances or
19 dangerous devices. The licensee transferring the
20 dangerous drugs and controlled substances or dangerous
21 devices shall immediately confirm in writing to the board
22 that the transfer has taken place.

23 (c) If a wholesaler, pharmacy, ~~medical—device—retailer~~
24 *home medical equipment services provider*, or
25 veterinary food-animal drug retailer fails to comply with
26 subdivision (b), the board may seek and obtain an order
27 from the superior court in the county in which the
28 wholesaler, pharmacy, ~~medical—device—retailer~~ *home*
29 *medical equipment services provider*, or veterinary
30 food-animal drug retailer is located, authorizing the
31 board to enter the wholesaler, pharmacy, ~~medical—device~~
32 ~~retailer~~ *home medical equipment services provider*, or
33 veterinary food-animal drug retailer and inventory and
34 store, transfer, sell, or arrange for the sale of, all dangerous
35 drugs and controlled substances and dangerous devices
36 found in the wholesaler, pharmacy, ~~medical—device~~
37 ~~retailer~~ *home medical equipment services provider*, or
38 veterinary food-animal drug retailer.

39 (d) In the event that the board sells or arranges for the
40 sale of any dangerous drugs, controlled substances, or



1 dangerous devices pursuant to subdivision (c), the board
2 may retain from the proceeds of the sale an amount equal
3 to the cost to the board of obtaining and enforcing an
4 order issued pursuant to subdivision (c), including the
5 cost of disposing of the dangerous drugs, controlled
6 substances, or dangerous devices. The remaining
7 proceeds, if any, shall be returned to the licensee from
8 whose premises the dangerous drugs or controlled
9 substances or dangerous devices were removed.

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

13 (2) Where a statute or regulation requires the licensee
14 to file with the board his or her address, and any change
15 of address, the notice required by this subdivision may be
16 sent by certified mail, postage prepaid, to the latest
17 address on file with the board and service of notice in this
18 manner shall be deemed completed on the 10th day after
19 the mailing.

20 (3) If the licensee is notified as provided in this
21 subdivision, and the licensee fails to contact the board for
22 the remaining proceeds within 30 calendar days after
23 personal service has been made or service by certified
24 mail, postage prepaid, is deemed completed, the
25 remaining proceeds shall be deposited by the board into
26 the Pharmacy Board Contingent Fund. These deposits
27 shall be deemed to have been received pursuant to
28 Chapter 7 (commencing with Section 1500) of Title 10 of
29 Part 3 of the Code of Civil Procedure and shall be subject
30 to claim or other disposition as provided in that chapter.

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

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

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

39 4331. (a) Any person who is neither a pharmacist nor
40 an exemptee and who takes charge of a ~~medical device~~



1 ~~retailer~~ *home medical equipment services provider*,
 2 wholesaler, or veterinary food-animal drug retailer or
 3 who dispenses a prescription or furnishes dangerous
 4 devices except as otherwise provided in this chapter is
 5 guilty of a misdemeanor.

6 (b) Any person who has obtained a license to conduct
 7 a ~~medical—device—retailer~~ *home medical equipment*
 8 *services provider* and who fails to place in charge of that
 9 ~~medical—device—retailer~~ *home medical equipment*
 10 *services provider* a pharmacist or exemptee, or any
 11 person who, by himself or herself, or by any other person,
 12 permits the compounding or dispensing of prescriptions,
 13 except by a pharmacist or exemptee, or as otherwise
 14 provided in this chapter, is guilty of a misdemeanor.

15 (c) Any person who has obtained a license to conduct
 16 a veterinary food-animal drug retailer and who fails to
 17 place in charge of that veterinary food-animal drug
 18 retailer a pharmacist or exemptee, or any person who, by
 19 himself or herself, or by any other person, permits the
 20 dispensing of prescriptions, except by a pharmacist or
 21 exemptee, or as otherwise provided in this chapter, is
 22 guilty of a misdemeanor.

23 (d) Any person who has obtained a license to conduct
 24 a wholesaler and who fails to place in charge of that
 25 wholesaler a pharmacist or exemptee, or any person who,
 26 by himself or herself, or by any other person, permits the
 27 dispensing of prescriptions, except by a pharmacist or
 28 exemptee, or as otherwise provided in this chapter, is
 29 guilty of a misdemeanor.

30 *SEC. 13. Section 4400 of the Business and Professions*
 31 *Code is amended to read:*

32 4400. The amount of fees and penalties prescribed by
 33 this chapter, except as otherwise provided, is that fixed by
 34 the board according to the following schedule:

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

38 (2) The fee for a ~~medical—device—retailer~~ *home medical*
 39 *equipment services provider* license shall not exceed the
 40 fee for a nongovernmental pharmacy license.



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

5 (c) The fee for processing remodeling plans and
6 inspecting a remodeled pharmacy shall be one hundred
7 thirty dollars (\$130) and may be increased to one
8 hundred seventy-five dollars (\$175).

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

12 (e) The fee for regrading an examination shall be
13 seventy-five dollars (\$75) and may be increased to
14 eighty-five dollars (\$85). If an error in grading is found
15 and the applicant passes the examination, the regrading
16 fee shall be refunded.

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

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

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

26 (i) The fee for examination and investigation for an
27 exemptee license under Sections 4053 and 4054 shall be
28 seventy-five dollars (\$75) and may be increased to one
29 hundred dollars (\$100), except for a veterinary
30 food-animal drug retailer exemptee, for whom the fee
31 shall be one hundred dollars (\$100).

32 (j) The fee for an exemptee license and annual
33 renewal under Sections 4053 and 4054 shall be one
34 hundred ten dollars (\$110) and may be increased to one
35 hundred fifty dollars (\$150), except that the fee for the
36 issuance of a veterinary food-animal drug retailer
37 exemptee license shall be one hundred fifty dollars
38 (\$150), for renewal one hundred ten dollars (\$110),
39 which may be increased to one hundred fifty dollars
40 (\$150), and for filing a late renewal fifty-five dollars (\$55).



1 (k) The fee for an out-of-state drug distributor's
2 license and annual renewal issued pursuant to Section
3 4120 shall be five hundred fifty dollars (\$550) and may be
4 increased to six hundred dollars (\$600).

5 (l) The fee for registration and annual renewal of
6 providers of continuing education shall be one hundred
7 dollars (\$100) and may be increased to one hundred
8 thirty dollars (\$130).

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

12 (n) The fee for evaluation of applications submitted by
13 graduates of foreign colleges of pharmacy or colleges of
14 pharmacy not recognized by the board shall be one
15 hundred sixty-five dollars (\$165) and may be increased to
16 one hundred seventy-five dollars (\$175).

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

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

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

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

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

37 (t) The fee for any applicant for a clinic permit is three
38 hundred forty dollars (\$340) and may be increased to four
39 hundred dollars (\$400) for each permit. The annual fee
40 for renewal of the permit is one hundred seventy-five



1 dollars (\$175) and may be increased to two hundred fifty
2 dollars (\$250) for each permit.

3 (u) The board shall charge a fee for the processing and
4 issuance of a registration to a pharmacy technician and a
5 separate fee for the biennial renewal of the registration.
6 The registration fee shall be twenty-five dollars (\$25) and
7 may be increased to fifty dollars (\$50). The biennial
8 renewal fee shall be twenty-five dollars (\$25) and may be
9 increased to fifty dollars (\$50).

10 (v) The fee for a veterinary food-animal drug retailer
11 license shall be four hundred dollars (\$400). The annual
12 renewal fee for a veterinary food-animal drug retailer
13 shall be two hundred fifty dollars (\$250).

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

16 *SEC. 14. Section 19051 of the Business and Professions*
17 *Code is amended to read:*

18 19051. Every upholstered-furniture retailer, unless he
19 or she holds an importer's license, a furniture and
20 bedding manufacturer's license, a wholesale furniture
21 and bedding dealer's license, a custom upholsterer's
22 license, or a retail furniture and bedding dealer's license
23 shall hold a retail furniture dealer's license.

24 (a) This section does not apply to a person whose sole
25 business is designing and specifying for interior spaces,
26 and who purchases specific amenable upholstered
27 furniture items on behalf of a client, provided that the
28 furniture is purchased from an appropriately licensed
29 importer, wholesaler, or retailer. This section does not
30 apply to a person who sells "used" and "antique"
31 furniture as defined in Sections 19008.1 and 19008.2.

32 (b) *This section does not apply to a person who is*
33 *licensed as a home medical equipment services provider*
34 *by the California State Board of Pharmacy, provided that*
35 *the furniture is purchased from an appropriately licensed*
36 *importer, wholesaler, or retailer.*

37 *SEC. 15. Section 19055 of the Business and Professions*
38 *Code is amended to read:*

39 19055. Every bedding retailer, unless he or she holds
40 an importer's license, an upholstered-furniture and



1 bedding manufacturer's license, a wholesale
2 upholstered-furniture and bedding dealer's license, or a
3 retail furniture and bedding dealer's license, shall hold a
4 retail bedding dealer's license.

5 (a) This section does not apply to a person whose sole
6 business is designing and specifying for interior spaces,
7 and who purchases specific amenable bedding items on
8 behalf of a client, provided that the bedding is purchased
9 from an appropriately licensed importer, wholesaler, or
10 retailer.

11 (b) *This section does not apply to a person who is*
12 *licensed as a home medical equipment services provider*
13 *by the California State Board of Pharmacy, provided that*
14 *the bedding is purchased from an appropriately licensed*
15 *importer, wholesaler, or retailer.*

16 SEC. 16. Section 19059.5 of the Business and
17 Professions Code is amended to read:

18 19059.5. Every sanitizer, ~~unless he or she holds a~~
19 ~~license as an upholstered furniture and bedding~~
20 ~~manufacturer, retail furniture and bedding dealer, retail~~
21 ~~bedding dealer, or a custom upholsterer,~~ shall hold a
22 sanitizer's license *unless he or she is licensed as a home*
23 *medical equipment services provider by the California*
24 *State Board of Pharmacy.*

25 SEC. 17. (a) *Any entity that holds a current, valid*
26 *license as a medical device retailer on January 1, 2001,*
27 *shall be deemed to be a licensed home medical*
28 *equipment services provider until January 1, 2002, or*
29 *until the renewal date of the license, whichever occurs*
30 *first, provided the entity is in compliance with all*
31 *applicable criteria for obtaining a license as a home*
32 *medical equipment services provider.*

33 (b) *Any entity that was not required to obtain a license*
34 *as a medical device retailer in order to provide*
35 *equipment or services prior to January 1, 2001, and that*
36 *is required to obtain a license as a home medical*
37 *equipment services provider pursuant to this act, shall*
38 *apply for a license as a home medical equipment services*
39 *provider by July 1, 2001; however, the requirement for*



1 *licensure shall only apply to those entities on and after*
2 *January 1, 2002.*

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

