

AMENDED IN SENATE AUGUST 25, 2000
AMENDED IN SENATE APRIL 27, 2000
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 Olberg

February 26, 1999

~~An act to 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. An act to amend Sections 19051, 19055, and 19059.5 of, to amend, repeal, and add Sections 4053, 4059, 4081, 4101, 4105, 4201, 4305.5, 4312, 4331, and 4400 of, to add and repeal Section 4139 of, and to repeal Sections 4034 and 4344 of, and to repeal Article 8 (commencing with Section 4130 of Chapter 9 of Division 2) of, the Business and Professions Code and to add Sections 109948, 109948.1, 110010.1, 110010.2, 111656, 111656.1, 111656.2, 111656.3, 111656.4, 111656.5, 111656.6, 111656.7, 111656.8, 111656.9, 111656.10, 111656.11, 111656.12, and 111656.13 to, the~~

Health and Safety Code, relating to home medical device retail facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1496, as amended, Olberg. Home medical ~~equipment services providers~~ *device retail facilities.*

~~Existing law, the~~

~~The Pharmacy Law; provides for the licensure and regulation of medical device retailers, and the Sherman Food, Drug, and Cosmetic Law provides, generally, for the regulation by the State Department of Health Services of foods, drugs, devices, and cosmetics. These laws make the violation of their provisions crimes. 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 delete provisions from the Pharmacy Law governing the licensure and regulation of medical device retailers and provide instead for—similar the licensure and regulation of home medical—equipment services providers device retail facilities, as defined, by the State Department of Health Services effective July 1, 2001. This bill would create the Drug and Device Safety Fund into which moneys, as specified, collected by the department in connection with home medical device retail facilities would be deposited for its use upon appropriation by the Legislature.~~

~~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~~



Because a violation of the bill's provisions pertaining to the Sherman Food, Drug, and Cosmetic Law would be a criminal offense, this bill would create a new crime, thereby imposing 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 no*. 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 in~~
11 ~~which 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~~
15 ~~authorized, home medical equipment, and home medical~~
16 ~~equipment services are furnished, sold, or dispensed at~~
17 ~~retail.~~

18 ~~(b) "Home medical equipment services provider"~~
19 ~~shall not include any area in a facility licensed by the State~~
20 ~~Department of Health Services where floor supplies,~~
21 ~~ward supplies, operating room supplies, or emergency~~
22 ~~room supplies of dangerous devices are stored or~~



1 possessed solely for treatment of patients registered for
2 treatment in the facility or for treatment of patients
3 receiving emergency care in the facility.

4 (e) “Home medical equipment services provider”
5 shall not include any area of a home health agency
6 licensed under Chapter 8 (commencing with Section
7 1725) of, or a hospice licensed under Chapter 8.5
8 (commencing with Section 1745) of, Division 2 of the
9 Health and Safety Code, where the supplies specified in
10 subdivision (e) of Section 4057 are stored or possessed
11 solely for treatment of patients by a home health agency
12 or licensed hospice, as long as all dangerous drugs or
13 devices are furnished to these patients only upon the
14 prescription or order of a physician, dentist, or podiatrist.

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

17 4034.1. In addition to the definitions in Section 4034,
18 all of the following definitions shall apply:

19 (a) “Home medical equipment services provider”
20 means an individual, entity, or corporation engaged in
21 the business of providing home medical equipment
22 services, directly or through contractual arrangement, to
23 an unrelated sick or disabled individual where that
24 individual resides.

25 (b) “Home medical equipment services” means the
26 delivery, installation, maintenance, replacement of, or
27 instruction in the use of, home medical equipment used
28 by a sick or disabled individual to allow the individual to
29 be maintained in a residence.

30 (c) “Home medical equipment” means
31 technologically sophisticated medical devices usable in a
32 home care setting, including, but not limited to, all of the
33 following:

34 (1) Oxygen and oxygen delivery systems.

35 (2) Ventilators.

36 (3) Continuous Positive Airway Pressure devices
37 (CPAP).

38 (4) Respiratory disease management services.

39 (5) Hospital beds and commodes.



1 ~~(6) Electronic and computer driven wheelchairs and~~
2 ~~seating systems.~~

3 ~~(7) Apnea monitors.~~

4 ~~(8) Low air loss continuous pressure management~~
5 ~~devices.~~

6 ~~(9) Transeutaneous Electrical Nerve Stimulator~~
7 ~~(TENS) units.~~

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

9 ~~(11) Distribution of medical gases to end users for~~
10 ~~human consumption.~~

11 ~~(12) Disposable medical supplies.~~

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

14 ~~(d) The term “home medical equipment” does not~~
15 ~~include any of the following:~~

16 ~~(1) Medical equipment used or dispensed in the~~
17 ~~normal course of treating patients by hospitals and~~
18 ~~nursing facilities, other than medical equipment~~
19 ~~delivered or dispensed by a separate unit or subsidiary~~
20 ~~corporation of a hospital or nursing facility or agency that~~
21 ~~is in the business of delivering home medical equipment~~
22 ~~to an individual’s residence.~~

23 ~~(2) Prosthetics, orthotics, and automated external~~
24 ~~defibrillators (AEDs).~~

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

26 ~~(4) Medical equipment provided through a~~
27 ~~physician’s office incident to a physician’s service.~~

28 ~~(5) Equipment provided by a pharmacist that is used~~
29 ~~to administer drugs or medicine that can be dispensed~~
30 ~~only by a pharmacist.~~

31 ~~(6) Enteral and parenteral equipment provided by a~~
32 ~~pharmacist.~~

33 ~~SEC. 3. Section 4130 of the Business and Professions~~
34 ~~Code is amended to read:~~

35 ~~4130. (a) No person shall conduct a home medical~~
36 ~~equipment services provider business in the State of~~
37 ~~California unless he or she has obtained a license from the~~
38 ~~board. A license shall be required for each home medical~~
39 ~~equipment services provider owned or operated by a~~
40 ~~specific person. A separate license shall be required for~~



1 each of the premises of any person operating a home
2 medical equipment services provider in more than one
3 location. The license shall be renewed annually and shall
4 not be transferable.

5 (b) A warehouse owned by a home medical
6 equipment services provider, the primary purpose of
7 which is storage, not dispensing of dangerous devices to
8 patients, shall be licensed at a fee one-half of that for a
9 home medical equipment services provider. There shall
10 be no separate or additional license fee for warehouse
11 premises owned by a home medical equipment services
12 provider that are physically connected to the retail
13 premises or that share common access.

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

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

31 (e) The licensure requirements of this section shall not
32 apply to the following entities or practitioners, unless the
33 entities or practitioners furnish home medical equipment
34 services through a separate entity, including, but not
35 limited to, a corporate entity, division, or other business
36 entity:

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

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



1 ~~(3) Manufacturers and wholesale distributors, when~~
2 ~~not selling directly to the patient.~~

3 ~~(4) Health care practitioners legally eligible to~~
4 ~~prescribe or order home medical equipment, or who use~~
5 ~~home medical equipment, or who use home medical~~
6 ~~equipment to treat their patients, including, but not~~
7 ~~limited to, physicians, nurses, physical therapists,~~
8 ~~respiratory therapists, occupational therapists, speech~~
9 ~~pathologists, optometrists, chiropractors, and podiatrists.~~

10 ~~(5) Pharmacists and pharmacies. Pharmacies that sell~~
11 ~~or rent home medical equipment shall be governed by~~
12 ~~other provisions of this chapter and any rules and~~
13 ~~regulations adopted under this chapter.~~

14 ~~(6) Hospice programs.~~

15 ~~(7) Nursing homes.~~

16 ~~(8) Veterinarians.~~

17 ~~(9) Dentists.~~

18 ~~(10) Emergency medical services.~~

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

21 ~~4131. (a) The following minimum standards shall~~
22 ~~apply to all home medical equipment services providers~~
23 ~~licensed by the board:~~

24 ~~(1) Each licensee shall store dangerous devices in a~~
25 ~~secure, lockable area.~~

26 ~~(2) Each licensee shall maintain the premises, fixtures,~~
27 ~~and equipment in a clean and orderly condition.~~

28 ~~(3) Each licensee shall maintain the premises in a dry,~~
29 ~~well-ventilated condition, free from rodents and insects,~~
30 ~~and with adequate lighting.~~

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

38 ~~SEC. 5. Section 4132 of the Business and Professions~~
39 ~~Code is amended to read:~~



1 ~~4132. (a) Each home medical equipment services~~
2 ~~provider shall have written policies and procedures~~
3 ~~related to home medical equipment services provider~~
4 ~~handling and, if authorized by the board pursuant to~~
5 ~~Section 4133, the dispensing of dangerous devices. Those~~
6 ~~written policies and procedures shall include, but not be~~
7 ~~limited to:~~

- 8 (1) ~~Training of staff, patients, and caregivers.~~
9 (2) ~~Cleaning, storage, and maintenance of home~~
10 ~~medical equipment.~~
11 (3) ~~Emergency services. If equipment malfunction~~
12 ~~may threaten a patient's health, access to emergency~~
13 ~~services 24 hours per day, 365 days per year shall be~~
14 ~~available for equipment maintenance or replacement.~~
15 (4) ~~Recordkeeping requirements.~~
16 (5) ~~Storage and security requirements.~~
17 (6) ~~Quality assurance.~~

18 (b) ~~The home medical equipment services provider~~
19 ~~shall make consultation available to the patient or~~
20 ~~primary caregiver about proper use of devices and~~
21 ~~related supplies furnished by the home medical~~
22 ~~equipment services provider. The home medical~~
23 ~~equipment services provider shall notify the patient or~~
24 ~~primary caregiver that consultation is available.~~

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

37 (d) ~~Each licensee shall prepare and maintain records~~
38 ~~of training and demonstrated competence for each~~
39 ~~individual employed or retained by the licensee. The~~



1 records shall be maintained for three years from and after
2 the last date of employment.

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

6 (1) Monitoring personnel performance.

7 (2) Storage, maintenance, and dispensing of
8 dangerous devices.

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

15 SEC. 6. Section 4133 of the Business and Professions
16 Code is amended to read:

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

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

30 (b) The pharmacist or exempt person shall be on the
31 premises at all times dangerous devices are available for
32 sale or fitting unless dangerous devices are stored
33 separately from other merchandise and are under the
34 exclusive control of the pharmacist or exemptee. A
35 pharmacist or an exemptee need not be present in the
36 warehouse facility of a home medical equipment services
37 provider unless the board establishes that requirement by
38 regulation based upon 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 home medical~~
5 ~~equipment services provider shall have a license issued by~~
6 ~~the board and shall have a pharmacist or exempt person~~
7 ~~on the premises if dangerous devices are furnished, sold,~~
8 ~~or dispensed.~~

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

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



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

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

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

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

38 (e) ~~The board may by regulation establish a list of~~
39 ~~those dangerous devices that may be maintained,~~
40 ~~dispensed, sold, or furnished only by a pharmacist in a~~



1 pharmacy. In establishing or modifying that list, the
2 board shall consider factors, including, but not limited to:

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

4 (2) The danger to the public if the device is not so
5 restricted.

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

8 (f) The board may, by regulation, establish labeling
9 requirements for dangerous devices sold, fitted, or
10 dispensed by a home medical equipment services
11 provider as it deems necessary for the protection of the
12 public.

13 SEC. 8. Section 4135 of the Business and Professions
14 Code is amended to read:

15 4135. Home medical equipment for rental purposes
16 shall, at all times while under control of the home medical
17 equipment services provider, be maintained in a clean
18 and sanitary condition and in good working order,
19 following, where available, manufacturer specifications.

20 SEC. 9. Section 4136 of the Business and Professions
21 Code is amended to read:

22 4136. (a) A nonresident home medical equipment
23 services provider shall not sell or distribute dangerous
24 devices in this state through any person or media other
25 than a wholesaler who is licensed pursuant to this chapter
26 without registering as a nonresident home medical
27 equipment services provider.

28 (b) Applications for a nonresident home medical
29 equipment services provider registration shall be made
30 on a form furnished by the board. The board may require
31 any information it deems reasonably necessary to carry
32 out the purposes of this section.

33 (c) The Legislature, by enacting this section, does not
34 intend a license issued to any nonresident home medical
35 equipment services provider pursuant to this section to
36 change or affect the tax liability imposed by Chapter 3
37 (commencing with Section 23501) of Part 11 of Division
38 2 of the Revenue and Taxation Code on any nonresident
39 home medical equipment services provider.



1 ~~(d) The Legislature, by enacting this section, does not~~
2 ~~intend a registration issued to any nonresident home~~
3 ~~medical equipment services provider pursuant to this~~
4 ~~section to serve as any evidence that the nonresident~~
5 ~~home medical equipment services provider is doing~~
6 ~~business within this state.~~

7 ~~SEC. 10. Section 4137 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~4137. When, in the opinion of the board, a high~~
10 ~~standard of patient safety, consistent with good patient~~
11 ~~care, can be provided by the licensure of a home medical~~
12 ~~equipment services provider that does not meet all of the~~
13 ~~requirements for licensure as a home medical equipment~~
14 ~~services provider, the board may waive any licensing~~
15 ~~requirements.~~

16 ~~SEC. 11. Section 4312 of the Business and Professions~~
17 ~~Code is amended to read:~~

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

38 ~~(b) In the event that the license of a wholesaler,~~
39 ~~pharmacy, home medical equipment services provider,~~
40 ~~or veterinary food animal drug retailer is voided~~



~~1 pursuant to subdivision (a) or revoked pursuant to
2 Article 19 (commencing with Section 4300), or a
3 wholesaler, pharmacy, home medical equipment services
4 provider, or veterinary food animal drug retailer, notifies
5 the board of its intent to remain closed or to discontinue
6 business, the licensee shall, within 10 days thereafter,
7 arrange for the transfer of all dangerous drugs and
8 controlled substances or dangerous devices to another
9 licensee authorized to possess the dangerous drugs and
10 controlled substances or dangerous devices. The licensee
11 transferring the dangerous drugs and controlled
12 substances or dangerous devices shall immediately
13 confirm in writing to the board that the transfer has taken
14 place.~~

~~15 (c) If a wholesaler, pharmacy, home medical
16 equipment services provider, or veterinary food animal
17 drug retailer fails to comply with subdivision (b), the
18 board may seek and obtain an order from the superior
19 court in the county in which the wholesaler, pharmacy,
20 home medical equipment services provider, or
21 veterinary food animal drug retailer is located,
22 authorizing the board to enter the wholesaler, pharmacy,
23 home medical equipment services provider, or
24 veterinary food animal drug retailer and inventory and
25 store, transfer, sell, or arrange for the sale of, all dangerous
26 drugs and controlled substances and dangerous devices
27 found in the wholesaler, pharmacy, home medical
28 equipment services provider, or veterinary food animal
29 drug retailer.~~

~~30 (d) In the event that the board sells or arranges for the
31 sale of any dangerous drugs, controlled substances, or
32 dangerous devices pursuant to subdivision (c), the board
33 may retain from the proceeds of the sale an amount equal
34 to the cost to the board of obtaining and enforcing an
35 order issued pursuant to subdivision (c), including the
36 cost of disposing of the dangerous drugs, controlled
37 substances, or dangerous devices. The remaining
38 proceeds, if any, shall be returned to the licensee from
39 whose premises the dangerous drugs or controlled
40 substances or dangerous devices were removed.~~



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

4 ~~(2) Where a statute or regulation requires the licensee~~
5 ~~to file with the board his or her address, and any change~~
6 ~~of address, the notice required by this subdivision may be~~
7 ~~sent by certified mail, postage prepaid, to the latest~~
8 ~~address on file with the board and service of notice in this~~
9 ~~manner shall be deemed completed on the 10th day after~~
10 ~~the mailing.~~

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

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

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

28 ~~SEC. 12. Section 4331 of the Business and Professions~~
29 ~~Code is amended to read:~~

30 ~~4331. (a) Any person who is neither a pharmacist nor~~
31 ~~an exemptee and who takes charge of a home medical~~
32 ~~equipment services provider, wholesaler, or veterinary~~
33 ~~food-animal drug retailer or who dispenses a prescription~~
34 ~~or furnishes dangerous devices except as otherwise~~
35 ~~provided in this chapter is guilty of a misdemeanor.~~

36 ~~(b) Any person who has obtained a license to conduct~~
37 ~~a home medical equipment services provider and who~~
38 ~~fails to place in charge of that home medical equipment~~
39 ~~services provider a pharmacist or exemptee, or any~~
40 ~~person who, by himself or herself, or by any other person,~~



1 ~~permits the compounding or dispensing of prescriptions,~~
2 ~~except by a pharmacist or exemptee, or as otherwise~~
3 ~~provided in this chapter, is guilty of a misdemeanor.~~

4 ~~(e) Any person who has obtained a license to conduct~~
5 ~~a veterinary food animal drug retailer and who fails to~~
6 ~~place in charge of that veterinary food animal drug~~
7 ~~retailer a pharmacist or exemptee, or any person who, by~~
8 ~~himself or herself, or by any other person, permits the~~
9 ~~dispensing of prescriptions, except by a pharmacist or~~
10 ~~exemptee, or as otherwise provided in this chapter, is~~
11 ~~guilty of a misdemeanor.~~

12 ~~(d) Any person who has obtained a license to conduct~~
13 ~~a wholesaler and who fails to place in charge of that~~
14 ~~wholesaler a pharmacist or exemptee, or any person who,~~
15 ~~by himself or herself, or by any other person, permits the~~
16 ~~dispensing of prescriptions, except by a pharmacist or~~
17 ~~exemptee, or as otherwise provided in this chapter, is~~
18 ~~guilty of a misdemeanor.~~

19 ~~SEC. 13. Section 4400 of the Business and Professions~~
20 ~~Code is amended to read:~~

21 ~~4400. The amount of fees and penalties prescribed by~~
22 ~~this chapter, except as otherwise provided, is that fixed by~~
23 ~~the board according to the following schedule:~~

24 ~~(a) (1) The fee for a nongovernmental pharmacy~~
25 ~~license shall be three hundred forty dollars (\$340) and~~
26 ~~may be increased to four hundred dollars (\$400).~~

27 ~~(2) The fee for a home medical equipment services~~
28 ~~provider license shall not exceed the fee for a~~
29 ~~nongovernmental pharmacy license.~~

30 ~~(b) The fee for a nongovernmental pharmacy or~~
31 ~~medical device retailer annual renewal shall be one~~
32 ~~hundred seventy-five dollars (\$175) and may be~~
33 ~~increased to two hundred fifty dollars (\$250).~~

34 ~~(c) The fee for processing remodeling plans and~~
35 ~~inspecting a remodeled pharmacy shall be one hundred~~
36 ~~thirty dollars (\$130) and may be increased to one~~
37 ~~hundred seventy-five dollars (\$175).~~

38 ~~(d) The fee for the pharmacist examination shall be~~
39 ~~one hundred fifty-five dollars (\$155) and may be~~
40 ~~increased to one hundred eighty five dollars (\$185).~~



1 ~~(e) The fee for regrading an examination shall be~~
2 ~~seventy-five dollars (\$75) and may be increased to~~
3 ~~eighty-five dollars (\$85). If an error in grading is found~~
4 ~~and the applicant passes the examination, the regrading~~
5 ~~fee shall be refunded.~~

6 ~~(f) The fee for a pharmacist license and biennial~~
7 ~~renewal shall be one hundred fifteen dollars (\$115) and~~
8 ~~may be increased to one hundred fifty dollars (\$150).~~

9 ~~(g) The fee for a wholesaler license and annual~~
10 ~~renewal shall be five hundred fifty dollars (\$550) and may~~
11 ~~be increased to six hundred dollars (\$600).~~

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

15 ~~(i) The fee for examination and investigation for an~~
16 ~~exemptee license under Sections 4053 and 4054 shall be~~
17 ~~seventy-five dollars (\$75) and may be increased to one~~
18 ~~hundred dollars (\$100), except for a veterinary~~
19 ~~food-animal drug retailer exemptee, for whom the fee~~
20 ~~shall be one hundred dollars (\$100).~~

21 ~~(j) The fee for an exemptee license and annual~~
22 ~~renewal under Sections 4053 and 4054 shall be one~~
23 ~~hundred ten dollars (\$110) and may be increased to one~~
24 ~~hundred fifty dollars (\$150), except that the fee for the~~
25 ~~issuance of a veterinary food-animal drug retailer~~
26 ~~exemptee license shall be one hundred fifty dollars~~
27 ~~(\$150), for renewal one hundred ten dollars (\$110);~~
28 ~~which may be increased to one hundred fifty dollars~~
29 ~~(\$150), and for filing a late renewal fifty five dollars (\$55).~~

30 ~~(k) The fee for an out-of-state drug distributor's~~
31 ~~license and annual renewal issued pursuant to Section~~
32 ~~4120 shall be five hundred fifty dollars (\$550) and may be~~
33 ~~increased to six hundred dollars (\$600).~~

34 ~~(l) The fee for registration and annual renewal of~~
35 ~~providers of continuing education shall be one hundred~~
36 ~~dollars (\$100) and may be increased to one hundred~~
37 ~~thirty dollars (\$130).~~

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



1 ~~(n) The fee for evaluation of applications submitted by~~
2 ~~graduates of foreign colleges of pharmacy or colleges of~~
3 ~~pharmacy not recognized by the board shall be one~~
4 ~~hundred sixty five dollars (\$165) and may be increased to~~
5 ~~one hundred seventy five dollars (\$175).~~

6 ~~(o) The fee for an intern license or extension shall be~~
7 ~~sixty five dollars (\$65) and may be increased to~~
8 ~~seventy five dollars (\$75). The fee for transfer of intern~~
9 ~~hours or verification of licensure to another state shall be~~
10 ~~fixed by the board not to exceed twenty dollars (\$20).~~

11 ~~(p) The board may, by regulation, provide for the~~
12 ~~waiver or refund of the additional fee for the issuance of~~
13 ~~a certificate where the certificate is issued less than 45~~
14 ~~days before the next succeeding regular renewal date.~~

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

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

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

26 ~~(t) The fee for any applicant for a clinic permit is three~~
27 ~~hundred forty dollars (\$340) and may be increased to four~~
28 ~~hundred dollars (\$400) for each permit. The annual fee~~
29 ~~for renewal of the permit is one hundred seventy five~~
30 ~~dollars (\$175) and may be increased to two hundred fifty~~
31 ~~dollars (\$250) for each permit.~~

32 ~~(u) The board shall charge a fee for the processing and~~
33 ~~issuance of a registration to a pharmacy technician and a~~
34 ~~separate fee for the biennial renewal of the registration.~~
35 ~~The registration fee shall be twenty five dollars (\$25) and~~
36 ~~may be increased to fifty dollars (\$50). The biennial~~
37 ~~renewal fee shall be twenty five dollars (\$25) and may be~~
38 ~~increased to fifty dollars (\$50).~~

39 ~~(v) The fee for a veterinary food-animal drug retailer~~
40 ~~license shall be four hundred dollars (\$400). The annual~~



1 ~~renewal fee for a veterinary food-animal drug retailer~~
2 ~~shall be two hundred fifty dollars (\$250).~~

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

5 ~~SEC. 14.~~

6 ~~SECTION 1. Section 4034 of the Business and~~
7 ~~Professions Code is repealed.~~

8 ~~4034. (a) "Medical device retailer" is an area, place,~~
9 ~~or premises, other than a pharmacy, in and from which~~
10 ~~dangerous devices are sold, fitted, or dispensed pursuant~~
11 ~~to prescription. "Medical device retailer" includes, but is~~
12 ~~not limited to, any area, place, or premises described in~~
13 ~~a license issued by the board wherein dangerous devices~~
14 ~~are stored, possessed, prepared, manufactured, or~~
15 ~~repackaged, and from which the dangerous devices are~~
16 ~~furnished, sold, or dispensed at retail.~~

17 ~~(b) "Medical device retailer" shall not include any~~
18 ~~area in a facility licensed by the State Department of~~
19 ~~Health Services where floor supplies, ward supplies,~~
20 ~~operating room supplies, or emergency room supplies of~~
21 ~~dangerous devices are stored or possessed solely for~~
22 ~~treatment of patients registered for treatment in the~~
23 ~~facility or for treatment of patients receiving emergency~~
24 ~~care in the facility.~~

25 ~~(c) "Medical device retailer" shall not include any~~
26 ~~area of a home health agency licensed under Chapter 8~~
27 ~~(commencing with Section 1725) of, or a hospice licensed~~
28 ~~under Chapter 8.5 (commencing with Section 1745) of,~~
29 ~~Division 2 of the Health and Safety Code, where the~~
30 ~~supplies specified in subdivision (e) of Section 4057 are~~
31 ~~stored or possessed solely for treatment of patients by a~~
32 ~~home health agency or licensed hospice, as long as all~~
33 ~~dangerous drugs or devices are furnished to these~~
34 ~~patients only upon the prescription or order of a~~
35 ~~physician, dentist, or podiatrist.~~

36 ~~SEC. 2. Section 4053 of the Business and Professions~~
37 ~~Code is amended to read:~~

38 ~~4053. (a) Subdivision (a) of Section 4051 shall not~~
39 ~~apply to a manufacturer, wholesaler, or medical device~~
40 ~~retailer if the board shall find that sufficient, qualified~~



1 supervision is employed by the manufacturer,
2 wholesaler, or medical device retailer to adequately
3 safeguard and protect the public health, nor shall Section
4 4051 apply to any laboratory licensed under Section 351
5 of Title III of the Public Health Service Act (Public Law
6 78-410).

7 (b) Section 4051 shall not prohibit a veterinary
8 food-animal drug retailer from selling or dispensing
9 veterinary food-animal drugs for food-producing animals
10 if the board finds that sufficient qualified supervision is
11 employed by the veterinary food-animal drug retailer to
12 adequately safeguard and protect the public health. Each
13 person applying for an exemption shall meet the
14 following requirements to obtain and maintain that
15 exemption:

16 (1) The veterinary food-animal drug retailer shall be
17 in the charge of an exempt person who has taken and
18 passed an examination administered by the board and
19 whose certificate of exemption is currently valid.

20 (2) Each premises maintained by a veterinary
21 food-animal drug retailer shall have a license issued by the
22 board and shall have an exempt person on the premises
23 if veterinary food-animal drugs are furnished, sold, or
24 dispensed.

25 (3) Only the exempt person shall prepare and affix the
26 label to all veterinary food-animal drugs.

27 (4) The exempt person shall complete a training
28 program to be approved by the board and qualify through
29 examination on areas covering the essential knowledge
30 necessary to properly read, fill, label, and dispense
31 veterinary food-animal prescriptions.

32 (c) An exemptee certificate issued pursuant to this
33 section is valid only at the location for which it is issued.
34 The licensee and the exemptee shall each notify the
35 board in writing within 30 days of the date on which the
36 exemptee is no longer employed by the licensee at the
37 location for which the exemptee certificate was issued.
38 The licensee shall not operate without a pharmacist or an
39 exemptee approved for that location by the board.



1 (d) This section shall remain in effect only until July 1,
2 2001, and as of January 1, 2002, is repealed, unless a later
3 enacted statute, which is enacted before January 1, 2002,
4 deletes or extends that date.

5 SEC. 3. Section 4053 is added to the Business and
6 Professions Code, to read:

7 4053. (a) Subdivision (a) of Section 4051 shall not
8 apply to a manufacturer or wholesaler if the board shall
9 find that sufficient, qualified supervision is employed by
10 the manufacturer or wholesaler to adequately safeguard
11 and protect the public health, nor shall Section 4051 apply
12 to any laboratory licensed under Section 351 of Title III
13 of the Public Health Service Act (Public Law 78-410).

14 (b) Section 4051 shall not prohibit a veterinary
15 food-animal drug retailer from selling or dispensing
16 veterinary food-animal drugs for food-producing animals
17 if the board finds that sufficient qualified supervision is
18 employed by the veterinary food-animal drug retailer to
19 adequately safeguard and protect the public health. Each
20 person applying for an exemption shall meet the
21 following requirements to obtain and maintain that
22 exemption:

23 (1) The veterinary food-animal drug retailer shall be
24 in the charge of an exempt person who has taken and
25 passed an examination administered by the board and
26 whose certificate of exemption is currently valid.

27 (2) Each premises maintained by a veterinary
28 food-animal drug retailer shall have a license issued by the
29 board and shall have an exempt person on the premises
30 if veterinary food-animal drugs are furnished, sold, or
31 dispensed.

32 (3) Only the exempt person shall prepare and affix the
33 label to all veterinary food-animal drugs.

34 (4) The exempt person shall complete a training
35 program to be approved by the board and qualify through
36 examination on areas covering the essential knowledge
37 necessary to properly read, fill, label, and dispense
38 veterinary food-animal prescriptions.

39 (c) An exemptee certificate issued pursuant to this
40 section is valid only at the location for which it is issued.



1 *The licensee and the exemptee shall each notify the*
2 *board in writing within 30 days of the date on which the*
3 *exemptee is no longer employed by the licensee at the*
4 *location for which the exemptee certificate was issued.*
5 *The licensee shall not operate without a pharmacist or an*
6 *exemptee approved for that location by the board.*

7 *(d) This section shall become operative on July 1, 2001.*

8 *SEC. 4. Section 4059 of the Business and Professions*
9 *Code is amended to read:*

10 4059. (a) No person shall furnish any dangerous
11 drug, except upon the prescription of a physician, dentist,
12 podiatrist, optometrist, or veterinarian. No person shall
13 furnish any dangerous device, except upon the
14 prescription of a physician, dentist, podiatrist,
15 optometrist, or veterinarian.

16 (b) This section shall not apply to the furnishing of any
17 dangerous drug or dangerous device by a manufacturer,
18 wholesaler or pharmacy to each other or to a physician,
19 dentist, podiatrist, or veterinarian, or to a laboratory
20 under sales and purchase records that correctly give the
21 date, the names and addresses of the supplier and the
22 buyer, the drug or device and its quantity. This section
23 shall not apply to the furnishing of any dangerous device
24 by a manufacturer, wholesaler, or pharmacy to a physical
25 therapist acting within the scope of his or her license
26 under sales and purchase records that correctly provide
27 the date the device is provided, the names and addresses
28 of the supplier and the buyer, and a description of the
29 device and the quantity supplied.

30 (c) A pharmacist, or a person exempted pursuant to
31 Section 4054, may distribute dangerous drugs and
32 dangerous devices directly to dialysis patients pursuant to
33 regulations adopted by the board. The board shall adopt
34 any regulations as are necessary to ensure the safe
35 distribution of these drugs and devices to dialysis patients
36 without interruption thereof. A person who violates a
37 regulation adopted pursuant to this subdivision shall be
38 liable upon order of the board to surrender his or her
39 personal license. These penalties shall be in addition to
40 penalties that may be imposed pursuant to Section 4301.



1 If the board finds any dialysis drugs or devices distributed
2 pursuant to this subdivision to be ineffective or unsafe for
3 the intended use, the board may institute immediate
4 recall of any or all of the drugs or devices distributed to
5 individual patients.

6 (d) Home dialysis patients who receive any drugs or
7 devices pursuant to subdivision (c) shall have completed
8 a full course of home training given by a dialysis center
9 licensed by the State Department of Health Services. The
10 physician prescribing the dialysis products shall submit
11 proof satisfactory to the manufacturer or wholesaler that
12 the patient has completed the program.

13 (e) A pharmacist may furnish a dangerous drug
14 authorized for use pursuant to Section 2620.3 to a physical
15 therapist or may furnish topical pharmaceutical agents
16 authorized for use pursuant to paragraph (5) of
17 subdivision (a) of Section 3041 to an optometrist. A record
18 containing the date, name and address of the buyer, and
19 name and quantity of the drug shall be maintained. This
20 subdivision shall not be construed to authorize the
21 furnishing of a controlled substance.

22 (f) A medical device retailer shall dispense, furnish,
23 transfer, or sell a dangerous device only to another
24 medical device retailer, a pharmacy, a physician, a
25 licensed health care facility, a licensed physical therapist,
26 or a patient or his or her personal representative.

27 (g) A pharmacist may furnish
28 electroneuromyographic needle electrodes or
29 hypodermic needles used for the purpose of placing wire
30 electrodes for kinesiological electromyographic testing to
31 physical therapists who are certified by the Physical
32 Therapy Examining Committee of California to perform
33 tissue penetration in accordance with Section 2620.5.

34 (h) Nothing in this section shall be construed as
35 permitting a licensed physical therapist to dispense or
36 furnish a dangerous device without a prescription of a
37 physician, dentist, podiatrist, or veterinarian.

38 (i) A veterinary food-animal drug retailer shall
39 dispense, furnish, transfer, or sell veterinary food-animal
40 drugs only to another veterinary food-animal drug



1 retailer, a pharmacy, a veterinarian, or to a veterinarian's
2 client pursuant to a prescription from the veterinarian for
3 food-producing animals.

4 *(j) This section shall remain in effect only until July 1,*
5 *2001, and as of January 1, 2002, is repealed, unless a later*
6 *enacted statute, which is enacted before January 1, 2002,*
7 *deletes or extends that date.*

8 *SEC. 5. Section 4059 is added to the Business and*
9 *Professions Code, to read:*

10 *4059. (a) No person shall furnish any dangerous*
11 *drug, except upon the prescription of a physician, dentist,*
12 *podiatrist, optometrist, or veterinarian. No person shall*
13 *furnish any dangerous device, except upon the*
14 *prescription of a physician, dentist, podiatrist,*
15 *optometrist, or veterinarian.*

16 *(b) This section shall not apply to the furnishing of any*
17 *dangerous drug or dangerous device by a manufacturer,*
18 *wholesaler or pharmacy to each other or to a physician,*
19 *dentist, podiatrist, or veterinarian, or to a laboratory*
20 *under sales and purchase records that correctly give the*
21 *date, the names and addresses of the supplier and the*
22 *buyer, the drug or device and its quantity. This section*
23 *shall not apply to the furnishing of any dangerous device*
24 *by a manufacturer, wholesaler, or pharmacy to a physical*
25 *therapist acting within the scope of his or her license*
26 *under sales and purchase records that correctly provide*
27 *the date the device is provided, the names and addresses*
28 *of the supplier and the buyer, and a description of the*
29 *device and the quantity supplied.*

30 *(c) A pharmacist, or a person exempted pursuant to*
31 *Section 4054, may distribute dangerous drugs and*
32 *dangerous devices directly to dialysis patients pursuant to*
33 *regulations adopted by the board. The board shall adopt*
34 *any regulations as are necessary to ensure the safe*
35 *distribution of these drugs and devices to dialysis patients*
36 *without interruption thereof. A person who violates a*
37 *regulation adopted pursuant to this subdivision shall be*
38 *liable upon order of the board to surrender his or her*
39 *personal license. These penalties shall be in addition to*
40 *penalties that may be imposed pursuant to Section 4301.*



1 *If the board finds any dialysis drugs or devices distributed*
2 *pursuant to this subdivision to be ineffective or unsafe for*
3 *the intended use, the board may institute immediate*
4 *recall of any or all of the drugs or devices distributed to*
5 *individual patients.*

6 (d) *Home dialysis patients who receive any drugs or*
7 *devices pursuant to subdivision (c) shall have completed*
8 *a full course of home training given by a dialysis center*
9 *licensed by the State Department of Health Services. The*
10 *physician prescribing the dialysis products shall submit*
11 *proof satisfactory to the manufacturer or wholesaler that*
12 *the patient has completed the program.*

13 (e) *A pharmacist may furnish a dangerous drug*
14 *authorized for use pursuant to Section 2620.3 to a physical*
15 *therapist or may furnish topical pharmaceutical agents*
16 *authorized for use pursuant to paragraph (5) of*
17 *subdivision (a) of Section 3041 to an optometrist. A record*
18 *containing the date, name and address of the buyer, and*
19 *name and quantity of the drug shall be maintained. This*
20 *subdivision shall not be construed to authorize the*
21 *furnishing of a controlled substance.*

22 (f) *A pharmacist may furnish*
23 *electroneuromyographic needle electrodes or*
24 *hypodermic needles used for the purpose of placing wire*
25 *electrodes for kinesiological electromyographic testing to*
26 *physical therapists who are certified by the Physical*
27 *Therapy Examining Committee of California to perform*
28 *tissue penetration in accordance with Section 2620.5.*

29 (g) *Nothing in this section shall be construed as*
30 *permitting a licensed physical therapist to dispense or*
31 *furnish a dangerous device without a prescription of a*
32 *physician, dentist, podiatrist, or veterinarian.*

33 (h) *A veterinary food-animal drug retailer shall*
34 *dispense, furnish, transfer, or sell veterinary food-animal*
35 *drugs only to another veterinary food-animal drug*
36 *retailer, a pharmacy, a veterinarian, or to a veterinarian's*
37 *client pursuant to a prescription from the veterinarian for*
38 *food-producing animals.*

39 (i) *This section shall become operative on July 1, 2001.*



1 SEC. 6. Section 4081 of the Business and Professions
2 Code is amended to read:

3 4081. (a) All records of manufacture and of sale,
4 acquisition, or disposition of dangerous drugs or
5 dangerous devices shall be at all times during business
6 hours open to inspection by authorized officers of the law,
7 and shall be preserved for at least three years from the
8 date of making. A current inventory shall be kept by
9 every manufacturer, wholesaler, pharmacy, medical
10 device retailer, veterinary food-animal drug retailer,
11 physician, dentist, podiatrist, veterinarian, laboratory,
12 clinic, hospital, institution, or establishment holding a
13 currently valid and unrevoked certificate, license,
14 permit, registration, or exemption under Division 2
15 (commencing with Section 1200) of the Health and
16 Safety Code or under Part 4 (commencing with Section
17 16000) of Division 9 of the Welfare and Institutions Code
18 who maintains a stock of dangerous drugs or dangerous
19 devices.

20 (b) The owner, officer, and partner of any pharmacy,
21 wholesaler, veterinary food-animal drug retailer, or
22 medical device retailer shall be jointly responsible, with
23 the pharmacist-in-charge or exemptee, for maintaining
24 the records and inventory described in this section.

25 (c) The pharmacist-in-charge or exemptee shall not be
26 criminally responsible for acts of the owner, officer,
27 partner, or employee that violate this section and of
28 which the pharmacist-in-charge or exemptee had no
29 knowledge, or in which he or she did not knowingly
30 participate.

31 (d) *This section shall remain in effect only until July 1,*
32 *2001, and as of January 1, 2002, is repealed, unless a later*
33 *enacted statute, which is enacted before January 1, 2002,*
34 *deletes or extends that date.*

35 SEC. 7. Section 4081 is added to the Business and
36 Professions Code, to read:

37 4081. (a) All records of manufacture and of sale,
38 acquisition, or disposition of dangerous drugs or
39 dangerous devices shall be at all times during business
40 hours open to inspection by authorized officers of the law,



1 and shall be preserved for at least three years from the
2 date of making. A current inventory shall be kept by
3 every manufacturer, wholesaler, pharmacy, veterinary
4 food-animal drug retailer, physician, dentist, podiatrist,
5 veterinarian, laboratory, clinic, hospital, institution, or
6 establishment holding a currently valid and unrevoked
7 certificate, license, permit, registration, or exemption
8 under Division 2 (commencing with Section 1200) of the
9 Health and Safety Code or under Part 4 (commencing
10 with Section 16000) of Division 9 of the Welfare and
11 Institutions Code who maintains a stock of dangerous
12 drugs or dangerous devices.

13 (b) The owner, officer, and partner of any pharmacy,
14 wholesaler, or veterinary food-animal drug retailer shall
15 be jointly responsible, with the pharmacist-in-charge or
16 exemptee, for maintaining the records and inventory
17 described in this section.

18 (c) The pharmacist-in-charge or exemptee shall not be
19 criminally responsible for acts of the owner, officer,
20 partner, or employee that violate this section and of
21 which the pharmacist-in-charge or exemptee had no
22 knowledge, or in which he or she did not knowingly
23 participate.

24 (d) This section shall become operative on July 1, 2001.

25 SEC. 8. Section 4101 of the Business and Professions
26 Code is amended to read:

27 4101. (a) Any pharmacist who takes charge of, or acts
28 as pharmacist-in-charge of a pharmacy or other entity
29 licensed by the board, who terminates his or her
30 employment at the pharmacy or other entity, shall notify
31 the board within 30 days of the termination of
32 employment.

33 (b) Any exemptee who takes charge of, or acts as
34 manager of, a wholesaler, medical device retailer, or
35 veterinary food-drug animal retailer, who terminates his
36 or her employment at that entity shall notify the board
37 within 30 days of the termination of employment.

38 (c) This section shall remain in effect only until July 1,
39 2001, and as of January 1, 2002, is repealed, unless a later



1 *enacted statute, which is enacted before January 1, 2002,*
2 *deletes or extends that date.*

3 *SEC. 9. Section 4101 is added to the Business and*
4 *Professions Code, to read:*

5 *4101. (a) Any pharmacist who takes charge of, or acts*
6 *as pharmacist-in-charge of a pharmacy or other entity*
7 *licensed by the board, who terminates his or her*
8 *employment at the pharmacy or other entity, shall notify*
9 *the board within 30 days of the termination of*
10 *employment.*

11 *(b) Any exemptee who takes charge of, or acts as*
12 *manager of, a wholesaler or veterinary food-drug animal*
13 *retailer, who terminates his or her employment at that*
14 *entity shall notify the board within 30 days of the*
15 *termination of employment.*

16 *(c) This section shall become operative on July 1, 2001.*

17 *SEC. 10. Section 4105 of the Business and Professions*
18 *Code is amended to read:*

19 *4105. (a) All records or other documentation of the*
20 *acquisition and disposition of dangerous drugs and*
21 *dangerous devices by any entity licensed by the board*
22 *shall be retained on the licensed premises in a readily*
23 *retrievable form.*

24 *(b) The licensee may remove the original records or*
25 *documentation from the licensed premises on a*
26 *temporary basis for license-related purposes. However, a*
27 *duplicate set of those records or other documentation*
28 *shall be retained on the licensed premises.*

29 *(c) The records required by this section shall be*
30 *retained on the licensed premises for a period of three*
31 *years from the date of making.*

32 *(d) Any records that are maintained electronically*
33 *shall be maintained so that the pharmacist-in-charge, the*
34 *pharmacist on duty if the pharmacist-in-charge is not on*
35 *duty, or, in the case of a veterinary food-animal drug*
36 *retailer, medical device retailer, or wholesaler, the*
37 *exemptee, shall, at all times during which the licensed*
38 *premises are open for business, be able to produce a hard*
39 *copy and electronic copy of all records of acquisition or*



1 disposition or other drug or dispensing-related records
2 maintained electronically.

3 (e) (1) Notwithstanding subdivisions (a), (b), and
4 (c), the board, may upon written request, grant to a
5 licensee a waiver of the requirements that the records
6 described in subdivisions (a), (b), and (c) be kept on the
7 licensed premises.

8 (2) A waiver granted pursuant to this subdivision shall
9 not affect the board's authority under this section or any
10 other provision of this chapter.

11 (f) *This section shall remain in effect only until July 1,*
12 *2001, and as of January 1, 2002, is repealed, unless a later*
13 *enacted statute, which is enacted before January 1, 2002,*
14 *deletes or extends that date.*

15 *SEC. 11. Section 4105 is added to the Business and*
16 *Professions Code, to read:*

17 *4105. (a) All records or other documentation of the*
18 *acquisition and disposition of dangerous drugs and*
19 *dangerous devices by any entity licensed by the board*
20 *shall be retained on the licensed premises in a readily*
21 *retrievable form.*

22 *(b) The licensee may remove the original records or*
23 *documentation from the licensed premises on a*
24 *temporary basis for license-related purposes. However, a*
25 *duplicate set of those records or other documentation*
26 *shall be retained on the licensed premises.*

27 *(c) The records required by this section shall be*
28 *retained on the licensed premises for a period of three*
29 *years from the date of making.*

30 *(d) Any records that are maintained electronically*
31 *shall be maintained so that the pharmacist-in-charge, the*
32 *pharmacist on duty if the pharmacist-in-charge is not on*
33 *duty, or, in the case of a veterinary food-animal drug*
34 *retailer or wholesaler, the exemptee, shall, at all times*
35 *during which the licensed premises are open for business,*
36 *be able to produce a hard copy and electronic copy of all*
37 *records of acquisition or disposition or other drug or*
38 *dispensing-related records maintained electronically.*

39 (e) (1) Notwithstanding subdivisions (a), (b), and
40 (c), the board, may upon written request, grant to a



1 licensee a waiver of the requirements that the records
2 described in subdivisions (a), (b), and (c) be kept on the
3 licensed premises.

4 (2) A waiver granted pursuant to this subdivision shall
5 not affect the board's authority under this section or any
6 other provision of this chapter.

7 (f) This section shall become operative on July 1, 2001.

8 SEC. 12. Article 8 (commencing with Section 4130) of
9 Chapter 9 of Division 2 of the Business and Professions
10 Code is repealed.

11 SEC. 13. Section 4139 is added to the Business and
12 Professions Code, to read:

13 4139. (a) Licenses to conduct a medical device
14 retailer issued or renewed by the California State Board
15 of Pharmacy prior to July 1, 2001, shall remain valid until
16 one year after the date of the issuance or renewal of the
17 license. On or after July 1, 2001, the California State Board
18 of Pharmacy shall not issue or renew a medical device
19 retailer license. Thereafter, entities seeking licensure as
20 a home medical device retail facility shall apply to the
21 State Department of Health Services.

22 (b) This section shall remain in effect only until July 1,
23 2002, and as of January 1, 2003, is repealed, unless a statute,
24 which is enacted before January 1, 2003, deletes or
25 extends that date.

26 SEC. 14. Section 4201 of the Business and Professions
27 Code is amended to read:

28 4201. (a) Each application to conduct a pharmacy,
29 wholesaler, medical device retailer, or veterinary
30 food-animal drug retailer, shall be made on a form
31 furnished by the board, and shall state the name, address,
32 usual occupation, and professional qualifications, if any, of
33 the applicant. If the applicant is other than a natural
34 person, the application shall state the information as to
35 each person beneficially interested therein.

36 (b) As used in this section, and subject to subdivision
37 (c), the term "person beneficially interested" means and
38 includes:

39 (1) If the applicant is a partnership or other
40 unincorporated association, each partner or member.



1 (2) If the applicant is a corporation, each of its officers,
2 directors, and stockholders, provided that no natural
3 person shall be deemed to be beneficially interested in a
4 nonprofit corporation.

5 (3) If the applicant is a limited liability company, each
6 officer, manager, or member.

7 (c) In any case where the applicant is a partnership or
8 other unincorporated association, is a limited liability
9 company, or is a corporation, and where the number of
10 partners, members, or stockholders, as the case may be,
11 exceeds five, the application shall so state, and shall
12 further state the information required by subdivision (a)
13 as to each of the five partners, members, or stockholders
14 who own the five largest interests in the applicant entity.
15 Upon request by the executive officer, the applicant shall
16 furnish the board with the information required by
17 subdivision (a) as to partners, members, or stockholders
18 not named in the application, or shall refer the board to
19 an appropriate source of that information.

20 (d) The application shall contain a statement to the
21 effect that the applicant has not been convicted of a
22 felony and has not violated any of the provisions of this
23 chapter. If the applicant cannot make this statement, the
24 application shall contain a statement of the violation, if
25 any, or reasons which will prevent the applicant from
26 being able to comply with the requirements with respect
27 to the statement.

28 (e) Upon the approval of the application by the board
29 and payment of the fee required by this chapter for each
30 pharmacy, wholesaler, medical device retailer, or
31 veterinary food-animal drug retailer, the executive
32 officer of the board shall issue a license to conduct a
33 pharmacy, wholesaler, medical device retailer, or
34 veterinary food-animal drug retailer, if all of the
35 provisions of this chapter have been complied with.

36 (f) Notwithstanding any other provision of law, the
37 pharmacy license shall authorize the holder to conduct a
38 pharmacy. The license shall be renewed annually and
39 shall not be transferable.



1 (g) Notwithstanding any other provision of law, the
2 wholesale license shall authorize the holder to wholesale
3 dangerous drugs and dangerous devices. The license shall
4 be renewed annually and shall not be transferable.

5 (h) Notwithstanding any other provision of law, the
6 medical device retailer license shall authorize the holder
7 thereof to operate as a medical device retailer and to sell
8 and dispense dangerous devices.

9 (i) Notwithstanding any other provision of law, the
10 veterinary food-animal drug retailer license shall
11 authorize the holder thereof to conduct a veterinary
12 food-animal drug retailer and to sell and dispense
13 veterinary food-animal drugs as defined in Section 4042.

14 (j) For licenses referred to in subdivisions (f), (g), (h),
15 and (i), any change in the proposed beneficial ownership
16 interest shall be reported to the board within 30 days
17 thereafter upon a form to be furnished by the board.

18 (k) *This section shall remain in effect only until July 1,*
19 *2001, and as of January 1, 2002, is repealed, unless a later*
20 *enacted statute, which is enacted before January 1, 2002,*
21 *deletes or extends that date.*

22 *SEC. 15. Section 4201 is added to the Business and*
23 *Professions Code, to read:*

24 *4201. (a) Each application to conduct a pharmacy,*
25 *wholesaler, or veterinary food-animal drug retailer, shall*
26 *be made on a form furnished by the board, and shall state*
27 *the name, address, usual occupation, and professional*
28 *qualifications, if any, of the applicant. If the applicant is*
29 *other than a natural person, the application shall state the*
30 *information as to each person beneficially interested*
31 *therein.*

32 *(b) As used in this section, and subject to subdivision*
33 *(c), the term "person beneficially interested" means and*
34 *includes:*

35 *(1) If the applicant is a partnership or other*
36 *unincorporated association, each partner or member.*

37 *(2) If the applicant is a corporation, each of its officers,*
38 *directors, and stockholders, provided that no natural*
39 *person shall be deemed to be beneficially interested in a*
40 *nonprofit corporation.*



1 (3) *If the applicant is a limited liability company, each*
2 *officer, manager, or member.*

3 (c) *In any case where the applicant is a partnership or*
4 *other unincorporated association, is a limited liability*
5 *company, or is a corporation, and where the number of*
6 *partners, members, or stockholders, as the case may be,*
7 *exceeds five, the application shall so state, and shall*
8 *further state the information required by subdivision (a)*
9 *as to each of the five partners, members, or stockholders*
10 *who own the five largest interests in the applicant entity.*
11 *Upon request by the executive officer, the applicant shall*
12 *furnish the board with the information required by*
13 *subdivision (a) as to partners, members, or stockholders*
14 *not named in the application, or shall refer the board to*
15 *an appropriate source of that information.*

16 (d) *The application shall contain a statement to the*
17 *effect that the applicant has not been convicted of a*
18 *felony and has not violated any of the provisions of this*
19 *chapter. If the applicant cannot make this statement, the*
20 *application shall contain a statement of the violation, if*
21 *any, or reasons which will prevent the applicant from*
22 *being able to comply with the requirements with respect*
23 *to the statement.*

24 (e) *Upon the approval of the application by the board*
25 *and payment of the fee required by this chapter for each*
26 *pharmacy, wholesaler, or veterinary food-animal drug*
27 *retailer, the executive officer of the board shall issue a*
28 *license to conduct a pharmacy, wholesaler, or veterinary*
29 *food-animal drug retailer, if all of the provisions of this*
30 *chapter have been complied with.*

31 (f) *Notwithstanding any other provision of law, the*
32 *pharmacy license shall authorize the holder to conduct a*
33 *pharmacy. The license shall be renewed annually and*
34 *shall not be transferable.*

35 (g) *Notwithstanding any other provision of law, the*
36 *wholesale license shall authorize the holder to wholesale*
37 *dangerous drugs and dangerous devices. The license shall*
38 *be renewed annually and shall not be transferable.*

39 (h) *Notwithstanding any other provision of law, the*
40 *veterinary food-animal drug retailer license shall*



1 *authorize the holder thereof to conduct a veterinary*
2 *food-animal drug retailer and to sell and dispense*
3 *veterinary food-animal drugs as defined in Section 4042.*

4 *(i) For licenses referred to in subdivisions (f), (g), and*
5 *(h), any change in the proposed beneficial ownership*
6 *interest shall be reported to the board within 30 days*
7 *thereafter upon a form to be furnished by the board.*

8 *(j) This section shall become operative on July 1, 2001.*

9 *SEC. 16. Section 4305.5 of the Business and*
10 *Professions Code is amended to read:*

11 4305.5. (a) Any person who has obtained a license to
12 conduct a wholesaler, medical device retailer, or
13 veterinary food-animal drug retailer, shall notify the
14 board within 30 days of the termination of employment
15 of any pharmacist or exemptee who takes charge of, or
16 acts as manager of the licensee. Failure to notify the board
17 within the 30-day period shall constitute grounds for
18 disciplinary action.

19 (b) Any person who has obtained a license to conduct
20 a wholesaler, medical device retailer, or veterinary
21 food-animal drug retailer, who willfully fails to notify the
22 board of the termination of employment of any
23 pharmacist or exemptee who takes charge of, or acts as
24 manager of the licensee, and who continues to operate
25 the licensee in the absence of a pharmacist or an
26 exemptee approved for that location, shall be subject to
27 summary suspension or revocation of his or her license to
28 conduct a pharmacy.

29 (c) Any pharmacist or exemptee who takes charge of,
30 or acts as manager of a wholesaler, medical device
31 retailer, or veterinary food-animal drug retailer, who
32 terminates his or her employment at the licensee, shall
33 notify the board within 30 days of the termination of
34 employment. Failure to notify the board within the
35 30-day period shall constitute grounds for disciplinary
36 action.

37 *(d) This section shall remain in effect only until July 1,*
38 *2001, and as of January 1, 2002, is repealed, unless a later*
39 *enacted statute, which is enacted before January 1, 2002,*
40 *deletes or extends that date.*



1 SEC. 17. Section 4305.5 is added to the Business and
2 Professions Code, to read:

3 4305.5. (a) Any person who has obtained a license to
4 conduct a wholesaler or veterinary food-animal drug
5 retailer, shall notify the board within 30 days of the
6 termination of employment of any pharmacist or
7 exemptee who takes charge of, or acts as manager of the
8 licensee. Failure to notify the board within the 30-day
9 period shall constitute grounds for disciplinary action.

10 (b) Any person who has obtained a license to conduct
11 a wholesaler or veterinary food-animal drug retailer, who
12 willfully fails to notify the board of the termination of
13 employment of any pharmacist or exemptee who takes
14 charge of, or acts as manager of the licensee, and who
15 continues to operate the licensee in the absence of a
16 pharmacist or an exemptee approved for that location,
17 shall be subject to summary suspension or revocation of
18 his or her license to conduct a pharmacy.

19 (c) Any pharmacist or exemptee who takes charge of,
20 or acts as manager of a wholesaler or veterinary
21 food-animal drug retailer, who terminates his or her
22 employment at the licensee, shall notify the board within
23 30 days of the termination of employment. Failure to
24 notify the board within the 30-day period shall constitute
25 grounds for disciplinary action.

26 (d) This section shall become operative on July 1, 2001.

27 SEC. 18. Section 4312 of the Business and Professions
28 Code is amended to read:

29 4312. (a) The board may void the license of a
30 wholesaler, pharmacy, medical device retailer, or
31 veterinary food-animal drug retailer if the licensed
32 premises remains closed, as defined in subdivision (e),
33 other than by order of the board. For good cause shown,
34 the board may void a license after a shorter period of
35 closure. To void a license pursuant to this subdivision, the
36 board shall make a diligent, good faith effort to give notice
37 by personal service on the licensee. If no written
38 objection is received within 10 days after personal service
39 is made or a diligent, good faith effort to give notice by
40 personal service on the licensee has failed, the board may



1 void the license without the necessity of a hearing. If the
2 licensee files a written objection, the board shall file an
3 accusation based on the licensee remaining closed.
4 Proceedings shall be conducted in accordance with
5 Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, and the
7 board shall have all the powers granted in that chapter.

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

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

37 (d) In the event that the board sells or arranges for the
38 sale of any dangerous drugs, controlled substances, or
39 dangerous devices pursuant to subdivision (c), the board
40 may retain from the proceeds of the sale an amount equal



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

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

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

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

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

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

35 (g) *This section shall remain in effect only until July 1,*
36 *2001, and as of January 1, 2002, is repealed, unless a later*
37 *enacted statute, which is enacted before January 1, 2002,*
38 *deletes or extends that date.*

39 *SEC. 19. Section 4312 is added to the Business and*
40 *Professions Code, to read:*



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

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

35 (c) If a wholesaler, pharmacy, or veterinary
36 food-animal drug retailer fails to comply with subdivision
37 (b), the board may seek and obtain an order from the
38 superior court in the county in which the wholesaler,
39 pharmacy, or veterinary food-animal drug retailer is
40 located, authorizing the board to enter the wholesaler,



1 pharmacy, or veterinary food-animal drug retailer and
2 inventory and store, transfer, sell, or arrange for the sale
3 of, all dangerous drugs and controlled substances and
4 dangerous devices found in the wholesaler, pharmacy, or
5 veterinary food-animal drug retailer.

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

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

20 (2) Where a statute or regulation requires the licensee
21 to file with the board his or her address, and any change
22 of address, the notice required by this subdivision may be
23 sent by certified mail, postage prepaid, to the latest
24 address on file with the board and service of notice in this
25 manner shall be deemed completed on the 10th day after
26 the mailing.

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

38 (e) For the purposes of this section, "closed" means
39 not engaged in the ordinary activity for which a license



1 *has been issued for at least one day each calendar week*
2 *during any 120-day period.*

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

5 *(g) This section shall become operative on July 1, 2001.*

6 *SEC. 20. Section 4331 of the Business and Professions*
7 *Code is amended to read:*

8 4331. (a) Any person who is neither a pharmacist nor
9 an exemptee and who takes charge of a medical device
10 retailer, wholesaler, or veterinary food-animal drug
11 retailer or who dispenses a prescription or furnishes
12 dangerous devices except as otherwise provided in this
13 chapter is guilty of a misdemeanor.

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

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

37 *(e) This section shall remain in effect only until July 1,*
38 *2001, and as of January 1, 2002, is repealed, unless a later*
39 *enacted statute, which is enacted before January 1, 2002,*
40 *deletes or extends that date.*



1 SEC. 21. Section 4331 is added to the Business and
2 Professions Code, to read:

3 4331. (a) Any person who is neither a pharmacist nor
4 an exemptee and who takes charge of a wholesaler or
5 veterinary food-animal drug retailer or who dispenses a
6 prescription or furnishes dangerous devices except as
7 otherwise provided in this chapter is guilty of a
8 misdemeanor.

9 (b) Any person who has obtained a license to conduct
10 a veterinary food-animal drug retailer and who fails to
11 place in charge of that veterinary food-animal drug
12 retailer a pharmacist or exemptee, or any person who, by
13 himself or herself, or by any other person, permits the
14 dispensing of prescriptions, except by a pharmacist or
15 exemptee, or as otherwise provided in this chapter, is
16 guilty of a misdemeanor.

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

24 (d) This section shall become operative on July 1, 2001.

25 SEC. 22. Section 4344 of the Business and Professions
26 Code is repealed.

27 ~~4344. No building shall have upon it or displayed~~
28 ~~within it or affixed to or used in connection with it a sign~~
29 ~~bearing the words "medical device retailer," or words of~~
30 ~~similar or like import, unless there is upon or within the~~
31 ~~building a medical device retailer holding a license issued~~
32 ~~by the board pursuant to Section 4130.~~

33 SEC. 23. Section 4400 of the Business and Professions
34 Code is amended to read:

35 4400. The amount of fees and penalties prescribed by
36 this chapter, except as otherwise provided, is that fixed by
37 the board according to the following schedule:

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



1 (2) The fee for a medical device retailer license shall
2 not exceed the fee for a nongovernmental pharmacy
3 license.

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

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

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

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

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

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

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

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

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



1 (\$150), for renewal one hundred ten dollars (\$110),
2 which may be increased to one hundred fifty dollars
3 (\$150), and for filing a late renewal fifty-five dollars (\$55).

4 (k) The fee for an out-of-state drug distributor's
5 license and annual renewal issued pursuant to Section
6 4120 shall be five hundred fifty dollars (\$550) and may be
7 increased to six hundred dollars (\$600).

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

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

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

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

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

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

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

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



1 (t) The fee for any applicant for a clinic permit is three
2 hundred forty dollars (\$340) and may be increased to four
3 hundred dollars (\$400) for each permit. The annual fee
4 for renewal of the permit is one hundred seventy-five
5 dollars (\$175) and may be increased to two hundred fifty
6 dollars (\$250) for each permit.

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

14 (v) The fee for a veterinary food-animal drug retailer
15 license shall be four hundred dollars (\$400). The annual
16 renewal fee for a veterinary food-animal drug retailer
17 shall be two hundred fifty dollars (\$250).

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

20 (x) *This section shall remain in effect only until July 1,*
21 *2001, and as of January 1, 2002, is repealed, unless a later*
22 *enacted statute, which is enacted before January 1, 2002,*
23 *deletes or extends that date.*

24 *SEC. 24. Section 4400 is added to the Business and*
25 *Professions Code, to read:*

26 *4400. The amount of fees and penalties prescribed by*
27 *this chapter, except as otherwise provided, is that fixed by*
28 *the board according to the following schedule:*

29 (a) *The fee for a nongovernmental pharmacy license*
30 *shall be three hundred forty dollars (\$340) and may be*
31 *increased to four hundred dollars (\$400).*

32 (b) *The fee for a nongovernmental pharmacy or*
33 *medical device retailer annual renewal shall be one*
34 *hundred seventy-five dollars (\$175) and may be*
35 *increased to two hundred fifty dollars (\$250).*

36 (c) *The fee for processing remodeling plans and*
37 *inspecting a remodeled pharmacy shall be one hundred*
38 *thirty dollars (\$130) and may be increased to one*
39 *hundred seventy-five dollars (\$175).*



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

4 (e) The fee for regrading an examination shall be
5 seventy-five dollars (\$75) and may be increased to
6 eighty-five dollars (\$85). If an error in grading is found
7 and the applicant passes the examination, the regrading
8 fee shall be refunded.

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

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

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

18 (i) The fee for examination and investigation for an
19 exemptee license under Sections 4053 and 4054 shall be
20 seventy-five dollars (\$75) and may be increased to one
21 hundred dollars (\$100), except for a veterinary
22 food-animal drug retailer exemptee, for whom the fee
23 shall be one hundred dollars (\$100).

24 (j) The fee for an exemptee license and annual
25 renewal under Sections 4053 and 4054 shall be one
26 hundred ten dollars (\$110) and may be increased to one
27 hundred fifty dollars (\$150), except that the fee for the
28 issuance of a veterinary food-animal drug retailer
29 exemptee license shall be one hundred fifty dollars
30 (\$150), for renewal one hundred ten dollars (\$110),
31 which may be increased to one hundred fifty dollars
32 (\$150), and for filing a late renewal fifty-five dollars (\$55).

33 (k) The fee for an out-of-state drug distributor's
34 license and annual renewal issued pursuant to Section
35 4120 shall be five hundred fifty dollars (\$550) and may be
36 increased to six hundred dollars (\$600).

37 (l) The fee for registration and annual renewal of
38 providers of continuing education shall be one hundred
39 dollars (\$100) and may be increased to one hundred
40 thirty dollars (\$130).



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

4 (n) The fee for evaluation of applications submitted by
5 graduates of foreign colleges of pharmacy or colleges of
6 pharmacy not recognized by the board shall be one
7 hundred sixty-five dollars (\$165) and may be increased to
8 one hundred seventy-five dollars (\$175).

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

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

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

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

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

29 (t) The fee for any applicant for a clinic permit is three
30 hundred forty dollars (\$340) and may be increased to four
31 hundred dollars (\$400) for each permit. The annual fee
32 for renewal of the permit is one hundred seventy-five
33 dollars (\$175) and may be increased to two hundred fifty
34 dollars (\$250) for each permit.

35 (u) The board shall charge a fee for the processing and
36 issuance of a registration to a pharmacy technician and a
37 separate fee for the biennial renewal of the registration.
38 The registration fee shall be twenty-five dollars (\$25) and
39 may be increased to fifty dollars (\$50). The biennial



1 *renewal fee shall be twenty-five dollars (\$25) and may be*
2 *increased to fifty dollars (\$50).*

3 *(v) The fee for a veterinary food-animal drug retailer*
4 *license shall be four hundred dollars (\$400). The annual*
5 *renewal fee for a veterinary food-animal drug retailer*
6 *shall be two hundred fifty dollars (\$250).*

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

9 *(x) This section shall become operative on July 1, 2001.*

10 *SEC. 25.* Section 19051 of the Business and Professions
11 Code is amended to read:

12 19051. Every upholstered-furniture retailer, unless he
13 or she holds an importer's license, a furniture and
14 bedding manufacturer's license, a wholesale furniture
15 and bedding dealer's license, a custom upholsterer's
16 license, or a retail furniture and bedding dealer's license
17 shall hold a retail furniture dealer's license.

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

26 (b) This section does not apply to a person who is
27 licensed as a home medical ~~equipment services provider~~
28 ~~device retail facility by the California State Board of~~
29 ~~Pharmacy, provided that by the State Department of~~
30 *Health Services, provided that* the furniture is purchased
31 from an appropriately licensed importer, wholesaler, or
32 retailer.

33 ~~SEC. 15.~~

34 *SEC. 26.* Section 19055 of the Business and Professions
35 Code is amended to read:

36 19055. Every bedding retailer, unless he or she holds
37 an importer's license, an upholstered-furniture and
38 bedding manufacturer's license, a wholesale
39 upholstered-furniture and bedding dealer's license, or a



1 retail furniture and bedding dealer's license, shall hold a
2 retail bedding dealer's license.

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

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

16 ~~SEC. 16.~~

17 ~~SEC. 27.~~ Section 19059.5 of the Business and
18 Professions Code is amended to read:

19 19059.5. Every sanitizer shall hold a sanitizer's license
20 unless he or she is licensed as a home medical ~~equipment~~
21 ~~services provider by the California State Board of~~
22 ~~Pharmacy.~~ *device retail facility by the State Department*
23 *of Health Services.*

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

32 (b) Any entity that was not required to obtain a license
33 as a medical device retailer in order to provide
34 equipment or services prior to January 1, 2001, and that
35 is required to obtain a license as a home medical
36 equipment services provider pursuant to this act, shall
37 apply for a license as a home medical equipment services
38 provider by July 1, 2001; however, the requirement for
39 licensure shall only apply to those entities on and after
40 January 1, 2002.



1 ~~SEC. 18.~~

2 SEC. 28. Section 109948 is added to the Health and
3 Safety Code, to read:

4 109948. (a) “Home medical device retail facility” is
5 an area, place, or premises, other than a licensed
6 pharmacy, in and from which prescription devices, home
7 medical devices, or home medical device services are
8 sold, fitted, or dispensed pursuant to prescription. “Home
9 medical device retail facility” includes, but is not limited
10 to, any area or place in which prescription devices, home
11 medical devices, or home medical device services are
12 stored, possessed, prepared, manufactured, or
13 repackaged, and from which the prescription devices,
14 home medical devices, and home medical device services
15 are furnished, sold, or dispensed at retail.

16 (b) “Home medical device retail facility” shall not
17 include any area in a facility licensed by the department
18 where floor supplies, ward supplies, operating room
19 supplies, or emergency room supplies of prescription
20 devices are stored or possessed solely for treatment of
21 patients registered for treatment in the facility or for
22 treatment of patients receiving emergency care in the
23 facility.

24 (c) “Home medical device retail facility” shall not
25 include any area of a home health agency licensed under
26 Chapter 8 (commencing with Section 1725) of, or a
27 hospice licensed under Chapter 8.5 (commencing with
28 Section 1745) of Division 2 where the supplies specified
29 in subdivision (c) of Section 4057 of the Business and
30 Professions Code are stored or possessed solely for
31 treatment of patients by a licensed home health agency
32 or licensed hospice, as long as all prescription devices are
33 furnished to these patients only upon the prescription or
34 order of health care practitioners authorized to prescribe
35 or order home medical devices or who use home medical
36 devices or who use home medical devices to treat their
37 patients.

38 SEC. 29. Section 109948.1 is added to the Health and
39 Safety Code, to read:

- 1 109948.1. (a) “Home medical device services” means
2 the delivery, installation, maintenance, replacement of,
3 or instruction in the use of, home medical devices used by
4 a sick or disabled individual to allow the individual to be
5 maintained in a residence.
- 6 (b) “Home medical device” means a device intended
7 for use in a home care setting including, but not limited
8 to, all of the following:
- 9 (1) Oxygen and oxygen delivery systems.
 - 10 (2) Ventilators.
 - 11 (3) Continuous Positive Airway Pressure devices
12 (CPAP).
 - 13 (4) Respiratory disease management devices.
 - 14 (5) Hospital beds and commodes.
 - 15 (6) Electronic and computer driven wheelchairs and
16 seating systems.
 - 17 (7) Apnea monitors.
 - 18 (8) Low air loss continuous pressure management
19 devices.
 - 20 (9) Transcutaneous Electrical Nerve Stimulator
21 (TENS) units.
 - 22 (10) Prescription devices.
 - 23 (11) Medical gases for human consumption.
 - 24 (12) Disposable medical supplies including, but not
25 limited to, incontinence supplies as defined in Section
26 14125.1 of the Welfare and Institutions Code.
 - 27 (13) In vitro diagnostic tests.
 - 28 (14) Any other similar device as defined in regulations
29 adopted by the department.
- 30 (c) The term “home medical device” does not include
31 any of the following:
- 32 (1) Devices used or dispensed in the normal course of
33 treating patients by hospitals and nursing facilities, other
34 than devices delivered or dispensed by a separate unit or
35 subsidiary corporation of a hospital or nursing facility or
36 agency that is in the business of delivering home medical
37 devices to an individual’s residence.
 - 38 (2) Prosthetics and orthotics.
 - 39 (3) Automated external defibrillators (AEDs).



1 (4) Devices provided through a physician's office
2 incident to a physician's service.

3 (5) Devices provided by a licensed pharmacist that are
4 used to administer drugs that can be dispensed only by a
5 licensed pharmacist.

6 (6) Enteral and parenteral devices provided by a
7 licensed pharmacist.

8 SEC. 30. Section 110010.1 is added to the Health and
9 Safety Code, to read:

10 110010.1. "Prescription device" means any device
11 limited to prescription use under Section 111470.

12 SEC. 31. Section 110010.2 is added to the Health and
13 Safety Code, to read:

14 110010.2. "Prescription drug" means any drug limited
15 to prescription use under Section 111470.

16 SEC. 32. Section 111656 is added to the Health and
17 Safety Code, to read:

18 111656. (a) No person shall conduct a home medical
19 device retail facility business in the State of California
20 unless he or she has obtained a license from the
21 department. A license shall be required for each home
22 medical device retail facility owned or operated by a
23 specific person. A separate license shall be required for
24 each of the premises of any person operating a home
25 medical device retail facility in more than one location.
26 The license shall be renewed annually and shall not be
27 transferable. The licensee shall be responsible for
28 assuring compliance with all requirements of this article
29 pertaining to home medical device retail facilities.

30 (b) Applications for a home medical device retail
31 facility license shall be made on a form furnished by the
32 department. The department may require any
33 information it deems reasonably necessary to carry out
34 the purposes of this section.

35 (c) A warehouse owned by a home medical device
36 retail facility the primary purpose of which is storage, not
37 dispensing of prescription devices to patients, shall be
38 licensed at a fee one-half of that for a home medical
39 device retail facility. There shall be no separate or
40 additional license fee for warehouse premises owned by



1 a home medical device retail facility that are physically
2 connected to the retail premises or that share common
3 access.

4 (d) The department may, at its discretion, issue a
5 temporary license when the ownership of a home
6 medical device retail facility is transferred from one
7 person to another upon any conditions and for the periods
8 of time as the department determines to be in the public
9 interest. A temporary license fee shall be established by
10 the department at an amount not to exceed the annual
11 fee for renewal of a license to conduct a home medical
12 device retail facility.

13 (e) Notwithstanding any other provision of law, a
14 licensed home medical device retail facility may furnish
15 a prescription device to a licensed health care facility for
16 storage in a secured emergency pharmaceutical supplies
17 container maintained within the facility in accordance
18 with facility regulations of the State Department of
19 Health Services set forth in Title 22 of the California Code
20 of Regulations.

21 (f) The licensure requirements of this section shall not
22 apply to the following entities or practitioners, unless the
23 entities or practitioners furnish home medical devices or
24 home medical device services through a separate entity
25 including, but not limited to, a corporate entity, division,
26 or other business entity:

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

29 (2) Hospitals, excluding providers of home medical
30 devices that are owned or related to a hospital.

31 (3) Manufacturers and wholesale distributors, if not
32 selling directly to the patient.

33 (4) Health care practitioners authorized to prescribe
34 or order home medical devices or who use home medical
35 devices or who use home medical devices to treat their
36 patients.

37 (5) Licensed pharmacists and pharmacies.
38 Pharmacies that sell or rent home medical devices shall
39 be governed by the provisions of Chapter 9 (commencing
40 with Section 4000) of Division 2 of the Business and



1 *Professions Code and any rules and regulations adopted*
2 *by the California State Board of Pharmacy.*

3 (6) *Licensed hospice programs.*

4 (7) *Licensed nursing homes.*

5 (8) *Licensed veterinarians.*

6 (9) *Licensed dentists.*

7 (10) *Emergency medical services provider.*

8 *SEC. 33. Section 111656.1 is added to the Health and*
9 *Safety Code, to read:*

10 *111656.1. (a) After January 1, 2002, prior to issuing a*
11 *license required by Section 111656, the department shall*
12 *inspect each place of business to determine ownership,*
13 *adequacy of facilities, and personnel qualifications. The*
14 *department shall inspect each licensee at least annually*
15 *thereafter. Nothing in this section shall prohibit the*
16 *department from inspecting any medical device retail*
17 *facility prior to January 1, 2002.*

18 (b) *The annual license fee for a home medical device*
19 *retail facility shall be eight hundred fifty dollars (\$850)*
20 *until adjusted pursuant to subdivision (c).*

21 (c) *The annual license fee required by Sections 111656*
22 *and 111630 shall be adjusted annually, commencing July*
23 *1, 2003, by the department so that license fee revenues*
24 *cover the estimated licensing program costs. Adjusted fee*
25 *amounts shall take into account the resources required*
26 *for inspections and other activities to support licensing*
27 *during the previous year and shall take into account*
28 *projected workload and changes in department overhead*
29 *costs during the upcoming year.*

30 (d) *Commencing July 1, 2003, the department shall by*
31 *July 30 of each year, publish the amount of fees to be*
32 *charged as adjusted pursuant to this section. This*
33 *adjustment of fees shall not be subject to the*
34 *requirements of Chapter 3.5 (commencing with Section*
35 *11340) of Part 1 of Division 3 of Title 2 of the Government*
36 *Code.*

37 (e) *Commencing January 1, 2003, the department*
38 *shall, on or before January 10 of each year, provide the*
39 *Legislature with a report recommending fee rates. The*
40 *report shall describe the estimated licensing program*



1 costs for the next fiscal year to carry out the licensing,
2 regulating, inspecting, and other duties and
3 responsibilities of the department in carrying out the
4 provisions of this article. The department shall describe
5 the projected license fee amount so that license fee
6 revenues cover the estimated licensing program costs.
7 Projected fee amounts shall take into account the
8 resources required for inspections and other activities to
9 support licensing during the previous year and shall take
10 into account projected workload and changes in
11 department overhead costs during the upcoming year.

12 (f) The Drug and Device Safety Fund is hereby
13 created as a special fund in the State Treasury. All moneys
14 collected by the department under this section and
15 Sections 111656.7, 111656.8, 111656.12, and 111630, and
16 fines and penalties collected by the department in the
17 enforcement of this article, shall be deposited in the fund
18 for use by the department upon appropriation by the
19 Legislature for the purposes of providing funds necessary
20 to carry out and implement the provisions of this article
21 relating to drugs and devices.

22 SEC. 34. Section 111656.2 is added to the Health and
23 Safety Code, to read:

24 111656.2. (a) The following standards shall apply to
25 all home medical device retail facilities:

26 (1) Each retail facility shall store prescription devices
27 in a secure, lockable area.

28 (2) Each retail facility shall maintain the premises,
29 fixtures, and equipment in a clean and orderly condition.

30 (3) Each retail facility shall maintain the premises in
31 a dry, well-ventilated condition, free from contamination
32 or other conditions that may render home medical
33 devices unfit for their intended use.

34 (b) The department may by regulation impose any
35 other standards pertaining to the acquisition, storage, and
36 maintenance of prescription devices or other goods or to
37 the maintenance or condition of the licensed premises of
38 any home medical device retail facility as the department
39 determines are reasonably necessary.



1 SEC. 35. Section 111656.3 is added to the Health and
2 Safety Code, to read:

3 111656.3. (a) Each home medical device retail
4 facility shall have written policies and procedures related
5 to home medical device handling and, if authorized by
6 the department pursuant to Section 111656.4, the
7 dispensing of prescription devices. Those written policies
8 and procedures shall be adequate to assure compliance
9 with this article and shall include, but not be limited to:

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

11 (2) Cleaning, storage, and maintenance of home
12 medical devices necessary to prevent damage or
13 contamination and to assure their operation in
14 accordance with manufacturer specifications.

15 (3) Emergency services. If home medical device
16 malfunction may threaten a patient's health, access to
17 emergency services 24 hours per day, 365 days per year
18 shall be available for device maintenance or replacement.

19 (4) Maintaining all records required by this article and
20 any regulations adopted pursuant to the provisions of this
21 article.

22 (5) Storage and security requirements to assure that
23 prescription devices are dispensed in accordance with
24 this article.

25 (6) Quality assurance.

26 (b) The home medical device retail facility shall make
27 consultation available to the patient or primary caregiver
28 about the proper use of devices and related supplies
29 furnished by the home medical device retail facility. The
30 home medical device retail facility shall notify the patient
31 or primary care giver that this consultation is available.

32 (c) Each home medical device retail facility shall
33 ensure all personnel who engage in the taking of orders
34 for, the selling of, or the fitting of prescription devices, if
35 authorized by the department pursuant to Section
36 111656.4, shall have training and demonstrate initial and
37 continuing competence in the order-taking, fitting, and
38 sale of prescription devices that the home medical device
39 retail facility furnishes pursuant to Section 111656.4.



1 (d) Each home medical device retail facility shall
2 prepare and maintain records of training and
3 demonstrated employee competence required under
4 this article for employees of the home medical device
5 retail facility. The records shall be maintained for three
6 years from and after the last date of employment.

7 (e) Each home medical device retail facility shall have
8 an ongoing, documented quality assurance program that
9 includes, but is not limited to, the following:

10 (1) Monitoring personnel performance to assure
11 compliance with this article.

12 (2) Storage, maintenance, and dispensing of
13 prescription devices to assure that prescription devices
14 are dispensed in accordance with this article.

15 (f) The records and documents specified in
16 subdivisions (a) and (e) shall be maintained for three
17 years from the date of making. The records and
18 documents described in subdivisions (a), (d), and (e),
19 shall be open to inspection at all times during business
20 hours by authorized agents of the department or an
21 inspector from the California State Board of Pharmacy for
22 the purpose of investigating a pharmacist.

23 SEC. 36. Section 111656.4 is added to the Health and
24 Safety Code, to read:

25 111656.4. Section 4051 of the Business and Professions
26 Code shall not prohibit a home medical device retail
27 facility from selling or dispensing prescription devices if
28 the department finds that sufficient qualified supervision
29 is employed by the home medical device retail facility to
30 adequately safeguard and protect the public health. Each
31 person applying to the department for this exemption
32 shall meet the following requirements to obtain and
33 maintain the exemption:

34 (a) A licensed pharmacist or an exemptee who has
35 taken and passed an examination administered by the
36 department and whose certificate of exemption is
37 currently valid, shall be in charge of the home medical
38 device retail facility.

39 (b) The licensed pharmacist or exemptee shall be on
40 the premises at all times that prescription devices are



1 available for sale or fitting unless the prescription devices
2 are stored separately from other merchandise and are
3 under the exclusive control of the licensed pharmacist or
4 exemptee. A licensed pharmacist or an exemptee need
5 not be present in the warehouse facility of a home
6 medical device retail facility unless the department
7 establishes that requirement by regulation based upon
8 the need to protect the public.

9 (c) The department may require an exemptee to
10 complete a designated number of hours of coursework in
11 department-approved courses of home health education
12 in the disposition of any disciplinary action taken against
13 the exemptee.

14 (d) Each premises maintained by a home medical
15 device retail facility shall have a license issued by the
16 department and shall have a licensed pharmacist or
17 exemptee on the premises if prescription devices are
18 furnished, sold, or dispensed.

19 (e) A home medical device retail facility may establish
20 locked storage (a lock box or locked area) for emergency
21 or after working hours furnishing of prescription devices.
22 Locked storage may be installed or placed in a service
23 vehicle of the home medical device retail facility for
24 emergency or after hours service to patients having
25 prescriptions for prescription devices.

26 (f) The department may by regulation authorize a
27 licensed pharmacist or exemptee to direct an employee
28 of the home medical device retail facility who operates
29 the service vehicle equipped with locked storage
30 described in subdivision (e) to deliver a prescription
31 device from the locked storage to patients having
32 prescriptions for prescription devices. These regulations
33 shall establish inventory requirements for the locked
34 storage by a licensed pharmacist or exemptee to take
35 place shortly after a prescription device has been
36 delivered from the locked storage to a patient.

37 SEC. 37. Section 111656.5 is added to the Health and
38 Safety Code, to read:

39 111656.5. (a) No person other than a licensed
40 pharmacist, an intern pharmacist, an exemptee, as



1 specified in Section 111656.4, or an authorized agent of
2 the department or a person authorized to prescribe, shall
3 be permitted in that area, place, or premises described in
4 the license issued by the department wherein
5 prescription devices are stored, possessed, prepared,
6 manufactured, or repacked, except that a licensed
7 pharmacist or exemptee shall be responsible for any
8 individual who enters the medical device retail facility for
9 the purposes of receiving, fitting, or consultation from the
10 licensed pharmacist or exemptee or any person
11 performing clerical, inventory control, housekeeping,
12 delivery, maintenance, or similar functions relating to the
13 home medical device retail facility. The licensed
14 pharmacist or exemptee shall remain present in the home
15 medical device retail facility any time an individual is
16 present who is seeking a fitting or consultation. However,
17 a licensed pharmacist or an exemptee need not be
18 present on the premises of a home medical device retail
19 facility at all times of its operation and need not to be
20 present in a warehouse facility owned by a home medical
21 device retail facility unless the department establishes
22 that requirement by regulation based upon the need to
23 protect the public. The exemptee need not be present if
24 the prescription devices are stored in a secure locked area
25 under the exclusive control of the exemptee and
26 unavailable for dispensing. This subdivision shall apply
27 only to prescription devices.

28 (b) A “warehouse” as used in this section, is a facility
29 owned by a home medical device retail facility that is used
30 for storage only. There shall be no fitting, display, or sales
31 at that location. A licensed pharmacist or exemptee shall
32 be designated as “in charge” of a warehouse but need not
33 be present during its operation. The licensed pharmacist
34 or exemptee may permit others to possess a key to the
35 warehouse.

36 (c) Notwithstanding the remainder of this section, a
37 home medical device retail facility may establish a locked
38 facility, meeting the requirements of Section 111656.4, for
39 furnishing prescription devices to patients having



1 *prescriptions for prescription devices in emergencies or*
2 *after working hours.*

3 *(d) The department may establish reasonable security*
4 *measures consistent with this section as a condition of*
5 *licensing in order to prevent unauthorized persons from*
6 *gaining access to the area, place, or premises, or to the*
7 *prescription devices therein.*

8 *(e) The department may by regulation establish*
9 *labeling requirements for prescription devices sold,*
10 *fitted, or dispensed by a home medical device retail*
11 *facility as it deems necessary for the protection of the*
12 *public.*

13 *SEC. 38. Section 111656.6 is added to the Health and*
14 *Safety Code, to read:*

15 *111656.6. Home medical devices for rental purposes*
16 *shall at all times while under the control of the home*
17 *medical device retail facility, be maintained in a clean*
18 *and sanitary condition and in good working order*
19 *following, where available, manufacturer specifications.*

20 *SEC. 39. Section 111656.7 is added to the Health and*
21 *Safety Code, to read:*

22 *111656.7. (a) Without registering as an out-of-state*
23 *home medical device retail facility, an out-of-state home*
24 *medical device retail facility shall not sell or distribute*
25 *prescription devices in this state through any person or*
26 *media other than a wholesaler who is licensed pursuant*
27 *to Chapter 9 (commencing with Section 4000) of Division*
28 *2 of the Business and Professions Code.*

29 *(b) Applications for an out-of-state home medical*
30 *device retail facility registration shall be made on a form*
31 *furnished by the department. The department may*
32 *require any information it deems reasonably necessary to*
33 *carry out the purposes of this section.*

34 *(c) The Legislature by enacting this section does not*
35 *intend a registration issued to any out-of-state home*
36 *medical device retail facility pursuant to this section to*
37 *change or affect the tax liability imposed by Chapter 3*
38 *(commencing with Section 23501) of Part II of Division*
39 *2 of the Revenue and Taxation Code on any out-of-state*
40 *home medical device retail facility.*



1 (d) *The Legislature by enacting this section does not*
2 *intend a registration issued to any out-of-state home*
3 *medical device retail facility pursuant to this section to*
4 *serve as any evidence that the out-of-state home medical*
5 *device retail facility is doing business within this state.*

6 SEC. 40. *Section 111656.8 is added to the Health and*
7 *Safety Code, to read:*

8 111656.8. (a) *No person acting as principal or agent*
9 *for any out-of-state home medical device retail facility*
10 *who has not obtained a registration from the department*
11 *pursuant to this article and who sells or distributes*
12 *prescription devices in this state that are not obtained*
13 *through a wholesaler who has obtained a license pursuant*
14 *to Chapter 9 (commencing with Section 4000) of Division*
15 *2 of the Business and Professions Code, or that are not*
16 *obtained through a selling or distribution outlet of an*
17 *out-of-state manufacturer that is licensed as a wholesaler*
18 *pursuant to Chapter 9 (commencing with Section 4000)*
19 *of Division 2 of the Business and Professions Code, shall*
20 *conduct the business of selling or distributing*
21 *prescription devices within this state without registering*
22 *with the department pursuant to this article.*

23 (b) *Registration of persons under this section shall be*
24 *made on a form furnished by the department. The*
25 *department may require any information as the*
26 *department deems reasonably necessary to carry out the*
27 *purposes of this section including, but not limited to, the*
28 *name and address of the registrant and the name and*
29 *address of the manufacturer whose prescription devices*
30 *he or she is selling or distributing.*

31 (c) *The department may deny, revoke, or suspend the*
32 *registration of persons registered under this article for*
33 *any violation of this article or Chapter 9 (commencing*
34 *with Section 4000) of Division 2 of the Business and*
35 *Professions Code or for any violation of Part 5*
36 *(commencing with Section 109875) of Division 104. The*
37 *department may deny, revoke, or suspend the person's*
38 *registration if the manufacturer whose prescription*
39 *devices he or she is selling or distributing violates this*
40 *article or Chapter 9 (commencing with Section 4000) of*



1 *Division 2 of the Business and Professions Code or Part 5*
2 *(commencing with Section 109875) of Division 104.*

3 *(d) Registration under this section shall be renewed*
4 *annually.*

5 *SEC. 41. Section 111656.9 is added to the Health and*
6 *Safety Code, to read:*

7 *111656.9. When, in the opinion of the department, a*
8 *high standard of patient safety, consistent with good*
9 *patient care, can be provided by the licensure of a home*
10 *medical device retail facility that does not meet all of the*
11 *requirements for licensure as a home medical device*
12 *retail facility, the department may waive any licensing*
13 *requirements for that medical device retail facility.*

14 *SEC. 42. Section 111656.10 is added to the Health and*
15 *Safety Code, to read:*

16 *111656.10. (a) The department may void the license*
17 *of a home medical device retail facility, if the licensed*
18 *premises remain closed, as defined in subdivision (e),*
19 *other than by order of the department. For good cause*
20 *shown, the department may void a license after a shorter*
21 *period of closure. To void a license pursuant to this*
22 *subdivision, the department shall make a diligent, good*
23 *faith effort to give notice by personal service on the*
24 *licensee. If no written objection is received within 10 days*
25 *after personal service is made or a diligent, good faith*
26 *effort to give notice by personal service on the licensee*
27 *has failed, the department may void the license without*
28 *the necessity of a hearing. If the licensee files a written*
29 *objection, the department shall file an accusation based*
30 *on the licensee remaining closed. Proceedings shall be*
31 *conducted in accordance with Chapter 5 (commencing*
32 *with Section 11500) of Part 1 of Division 3 of Title 2 of the*
33 *Government Code, and the department shall have all the*
34 *powers granted in that chapter.*

35 *(b) In the event that the license of a home medical*
36 *device retail facility is voided pursuant to subdivision (a)*
37 *or revoked or a home medical device retail facility*
38 *notifies the department of its intent to remain closed or*
39 *to discontinue business, the licensee shall, within 10 days*
40 *thereafter, arrange for the transfer of all prescription*



1 devices to another licensee authorized to possess the
2 prescription devices. The licensee transferring the
3 prescription devices shall immediately confirm in writing
4 to the department that the transfer has taken place.

5 (c) If a home medical device retail facility fails to
6 comply with subdivision (b), the department may seek
7 and obtain an order from the superior court in the county
8 in which the home medical device retail facility is located,
9 authorizing the department to enter the home medical
10 device retail facility and inventory and store, transfer,
11 sell, or arrange for the sale of, prescription devices found
12 in the home medical device retail facility.

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

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

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

32 (3) If the licensee is notified as provided in this
33 subdivision, and the licensee fails to contact the
34 department for the remaining proceeds within 30
35 calendar days after the personal service has been made or
36 service by certified mail, postage prepaid, is deemed
37 completed, the remaining proceeds shall be deposited by
38 the department into the Drug and Device Safety Fund.
39 These deposits shall be deemed to have been received
40 pursuant to Chapter 7 (commencing with Section 1500)



1 of Title 10 of Part 3 of the Code of Civil Procedure and
2 shall be subject to claim or other disposition as provided
3 in that chapter.

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

8 (f) Nothing in this section shall be construed as
9 requiring a home medical device retail facility to be open
10 seven days a week.

11 SEC. 43. Section 111656.11 is added to the Health and
12 Safety Code, to read:

13 111656.11. (a) It is unlawful for any person who is
14 neither a licensed pharmacist nor an exemptee to take
15 charge of a home medical device retail facility or to
16 furnish prescription devices except as otherwise provided
17 in this article.

18 (b) It is unlawful for any person who has obtained a
19 license to conduct a home medical device retail facility to
20 fail to place a licensed pharmacist or exemptee in charge
21 of that home medical device retail facility or for any
22 person to, by himself or herself, or by any other person,
23 permit the compounding or dispensing of prescriptions,
24 except by a licensed pharmacist or exemptee or as
25 otherwise provided in this article.

26 SEC. 44. Section 111656.12 is added to the Health and
27 Safety Code, to read:

28 111656.12. (a) The fee for examination and
29 investigation for an exemptee license under Section
30 111656.4 shall be one hundred dollars (\$100).

31 (b) The fee for an exemptee license and annual
32 renewal under Section 111656.4 shall be one hundred fifty
33 dollars (\$150).

34 (c) The fee for registration as an out-of-state home
35 medical device retail facility or as the principal or agent
36 of an out-of-state home medical device retail facility shall
37 be one hundred fifty dollars (\$150).

38 SEC. 45. Section 111656.13 is added to the Health and
39 Safety Code, to read:



1 111656.13. (a) Any entity that prior to July 1, 2001,
2 holds a current, valid license as a medical device retailer
3 pursuant to Section 4130 of the Business and Professions
4 Code, shall be deemed to be a licensed home medical
5 device retail facility until the expiration of that license if
6 the entity is in compliance with all applicable criteria for
7 obtaining a license as a home medical device retail
8 facility.

9 (b) Any entity that was not required to obtain a license
10 as a medical device retailer in order to provide
11 equipment or services prior to July 1, 2001, and that is
12 required to obtain a license as a home medical device
13 retail facility pursuant to Section 111656, shall apply for a
14 license as a home medical device retail facility by July 1,
15 2001; however, the requirement for licensure shall only
16 apply to those entities on and after January 1, 2002.

17 SEC. 46. Sections 1, 12, and 22 of this act shall become
18 operative on July 1, 2001.

19 SEC. 47. No reimbursement is required by this act
20 pursuant to Section 6 of Article XIII B of the California
21 Constitution because the only costs that may be incurred
22 by a local agency or school district will be incurred
23 because this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition
27 of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.

