

AMENDED IN SENATE AUGUST 18, 2000

AMENDED IN SENATE JUNE 29, 2000

AMENDED IN SENATE JUNE 15, 2000

AMENDED IN ASSEMBLY MAY 3, 2000

AMENDED IN ASSEMBLY APRIL 5, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2018

**Introduced by Assembly Members Thomson, Runner, and
Migden**

**(Coauthors: Assembly Members Aanestad, Aroner, Bates,
Cardenas, Cox, Honda, Kuehl, Strom-Martin, and Zettel)**

(Coauthors: Senators Bowen and Johannessen)

February 18, 2000

An act to amend Sections 11161, ~~11164~~, ~~11165~~, and ~~11167~~ and *11164* of, and to repeal Section 11163 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2018, as amended, Thomson. Controlled substances: Schedule II: triplicate prescription.

(1) Existing law provides that no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense such a prescription unless it complies with specified requirements, one of which is that prescriptions for Schedule II controlled substances shall be prepared in triplicate. The Department of Justice is required to issue these triplicate

prescriptions in serially numbered groups of not more than 100 forms to any practitioner authorized to write a prescription for Schedule II controlled substances. Existing law also limits the number of prescription blank groups issued to an individual prescriber by the Department of Justice.

This bill would revise the distribution requirements applicable to prescription blanks for Schedule II *controlled substances* and would revise the information required in a prescription for a Schedule II controlled substance. The bill would authorize a pharmacist to fill a prescription for a controlled substance classified in Schedule II containing an error or errors, provided the pharmacist notifies the prescriber of the error or errors and the prescriber approves any correction. The prescriber would be required to fax or mail a corrected prescription to the pharmacist within 7 days of the prescription being dispensed.

~~(2) Existing law provides for the electronic monitoring of the prescribing and dispensing of Schedule II controlled substances pursuant to the Controlled Substance Utilization Review and Evaluation System (CURES) program, as specified. The program is scheduled to become inoperative on July 1, 2003.~~

~~This bill would continue the CURES program indefinitely by repealing its repeal date if the Attorney General determines, and provides timely written notification to the appropriate policy committees of the Legislature of that determination, that the CURES program should be continued on and after July 1, 2003, as specified. The bill would provide that if the CURES program continues on and after July 1, 2003, the requirement that a prescription for a Schedule II controlled substance shall be written on a triplicate prescription shall terminate on July 1, 2003, and a prescription for a Schedule II controlled substance shall instead meet the requirements existing for controlled substances in Schedules III, IV, and V.~~

~~(3) Existing law provides that, subject to specified requirements, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order in an emergency where failure to issue a prescription may result in loss of life or intense suffering.~~



~~This bill would also permit a Schedule II controlled substance to be dispensed on an oral, written, or electronic data transmission order in an emergency situation as defined in a provision of federal law.~~

~~(4) Existing law provides that in general a violation of any of the provisions relating to the prescription of controlled substances and to the CURES program is a misdemeanor. By creating new crimes and extending the operation of criminal provisions, this bill would impose a state-mandated local program on local government.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 11161 of the Health and Safety
- 2 Code is amended to read:
- 3 11161. (a) Prescription blanks shall be issued by the
- 4 Department of Justice in serially numbered groups of not
- 5 more than 100 forms each in triplicate unless a
- 6 practitioner orally, electronically, or in writing requests
- 7 a larger amount, and shall be furnished to any
- 8 practitioner authorized to write a prescription for
- 9 controlled substances classified in Schedule II. The
- 10 Department of Justice may charge a fee for the
- 11 prescription blanks sufficient to reimburse the
- 12 department for the actual costs associated with the
- 13 preparation, processing, and filing of any forms issued
- 14 pursuant to this section. The prescription blanks shall not
- 15 be transferable. Any person possessing a triplicate
- 16 prescription blank otherwise than as provided in this
- 17 section is guilty of a misdemeanor.
- 18 (b) When a practitioner is named in a warrant of arrest
- 19 or is charged in an accusatory pleading with a felony



1 violation of Section 11153, 11154, 11156, 11157, 11170,
2 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378,
3 11378.5, 11379, 11379.5, or 11379.6, the court in which the
4 accusatory pleading is filed or the magistrate who issued
5 the warrant of arrest shall, upon the motion of a law
6 enforcement agency which is supported by reasonable
7 cause, issue an order which requires the practitioner to
8 surrender to the clerk of the court all triplicate
9 prescription blanks in the practitioner's possession at a
10 time set in the order and shall direct the Department of
11 Justice to withhold prescription blanks from the
12 practitioner. The law enforcement agency obtaining the
13 order shall notify the Department of Justice of this order.
14 Except as provided in subdivisions (c) and (f) of this
15 section, the order shall remain in effect until further
16 order of the court. Any practitioner possessing
17 prescription blanks in violation of the order is guilty of a
18 misdemeanor.

19 (c) The order provided by subdivision (b) shall be
20 vacated if the court or magistrate finds that the
21 underlying violation or violations are not supported by
22 reasonable cause at a hearing held within two court days
23 after the practitioner files and personally serves upon the
24 prosecuting attorney and the law enforcement agency
25 that obtained the order, a notice of motion to vacate the
26 order with any affidavits on which the practitioner relies.
27 At the hearing, the burden of proof, by a preponderance
28 of the evidence, is on the prosecution. Evidence
29 presented at the hearing shall be limited to the warrant
30 of arrest with supporting affidavits, the motion to require
31 the defendant to surrender all triplicate prescription
32 blanks with supporting affidavits, the sworn complaint
33 together with any documents or reports incorporated by
34 reference thereto which, if based on information and
35 belief, state the basis for the information, or any other
36 documents of similar reliability as well as affidavits and
37 counter affidavits submitted by the prosecution and
38 defense. Granting of the motion to vacate the order is no
39 bar to prosecution of the alleged violation or violations.



1 (d) The defendant may elect to challenge the order
2 issued under subdivision (b) at the preliminary
3 examination. At that hearing, the evidence shall be
4 limited to that set forth in subdivision (c) and any other
5 evidence otherwise admissible at the preliminary
6 examination.

7 (e) If the practitioner has not moved to vacate the
8 order issued under subdivision (b) by the time of the
9 preliminary examination and he or she is held to answer
10 on the underlying violation or violations, the practitioner
11 shall be precluded from afterwards moving to vacate the
12 order. If the defendant is not held to answer on the
13 underlying charge or charges at the conclusion of the
14 preliminary examination, the order issued under
15 subdivision (b) shall be vacated.

16 (f) Notwithstanding subdivision (e), any practitioner
17 who is diverted pursuant to Chapter 2.5 (commencing
18 with Section 1000) of Title 7 of Part 2 of the Penal Code
19 may file a motion to vacate the order issued under
20 subdivision (b).

21 SEC. 2. Section 11163 of the Health and Safety Code
22 is repealed.

23 SEC. 3. Section 11164 of the Health and Safety Code
24 is amended to read:

25 11164. Except as provided in Section 11167, no person
26 shall prescribe a controlled substance, nor shall any
27 person fill, compound, or dispense such a prescription
28 unless it complies with the requirements of this section.

29 (a) The signature on each prescription for a controlled
30 substance classified in Schedule II shall be wholly written
31 in ink or indelible pencil in the handwriting of the
32 prescriber upon the official prescription form issued by
33 the Department of Justice. Each prescription shall be
34 prepared in triplicate, signed by the prescriber, and shall
35 contain, either typewritten or handwritten by the
36 physician or his or her employee, the date, name, and
37 address of the person for whom the controlled substance
38 is prescribed, the name, quantity, and strength of the
39 controlled substance prescribed, directions for use, and
40 the address, category of professional licensure, and the



1 federal controlled substance registration number of the
2 prescriber. The original and duplicate of the prescription
3 shall be delivered to the pharmacist filling the
4 prescription. The duplicate shall be retained by the
5 pharmacist and the original, properly endorsed by the
6 pharmacist with the name and address of the pharmacy,
7 the pharmacy's state license number, the date the
8 prescription was filled and the signature of the
9 pharmacist, shall be transmitted to the Department of
10 Justice at the end of the month in which the prescription
11 was filled. Upon receipt of an incompletely prepared
12 official prescription form of the Department of Justice,
13 the pharmacist may enter on the face of the prescription
14 the address of the patient. A pharmacist may fill a
15 prescription for a controlled substance classified in
16 Schedule II containing an error or errors, if the
17 pharmacist notifies the prescriber of the error or errors
18 and the prescriber approves any correction. The
19 prescriber shall fax or mail a corrected prescription to the
20 pharmacist within seven days of the prescription being
21 dispensed.

22 (b) Each prescription for a controlled substance
23 classified in Schedule III, IV, or V, except as authorized
24 by subdivision (c), shall be subject to the following
25 requirements:

26 (1) The prescription shall be signed and dated by the
27 prescriber and shall contain the name of the person for
28 whom the controlled substance is prescribed, the name
29 and quantity of the controlled substance prescribed, and
30 directions for use. With respect to prescriptions for
31 controlled substances classified in Schedules III and IV,
32 the signature, date, and information required by this
33 paragraph shall be wholly written in ink or indelible
34 pencil in the handwriting of the prescriber.

35 (2) In addition, the prescription shall contain the
36 name, address, telephone number, category of
37 professional licensure, and federal controlled substance
38 registration number of the prescriber. The information
39 required by this paragraph shall be either preprinted
40 upon the prescription blank, typewritten, rubber



1 stamped, or printed by hand. Notwithstanding any
2 provision in this section, the prescriber's address,
3 telephone number, category of professional licensure, or
4 federal controlled substances registration number need
5 not appear on the prescription if that information is
6 readily retrievable in the pharmacy.

7 (3) The prescription shall also contain the address of
8 the person for whom the controlled substance is
9 prescribed. If the prescriber does not specify this address
10 on the prescription, the pharmacist filling the
11 prescription or an employee acting under the direction
12 of the pharmacist shall write or type the address on the
13 prescription or maintain this information in a readily
14 retrievable form in the pharmacy.

15 (c) Any controlled substance classified in Schedule III,
16 IV, or V may be dispensed upon an oral or electronically
17 transmitted prescription, which shall be reduced to
18 writing by the pharmacist filling the prescription or by
19 any other person expressly authorized by provisions of
20 the Business and Professions Code. The date of issue of the
21 prescription and all the information required for a
22 written prescription by subdivision (b) shall be included
23 in the written record of the prescription. The pharmacist
24 need not reduce to writing the address, telephone
25 number, license classification, or federal registry number
26 of the prescriber or the address of the patient if that
27 information is readily retrievable in the pharmacy.
28 Pursuant to authorization of the prescriber, any
29 employee of the prescriber on behalf of the prescriber
30 may orally or electronically transmit a prescription for a
31 controlled substance classified in Schedule III, IV, or V, if
32 in these cases the written record of the prescription
33 required by this subdivision specifies the name of the
34 employee of the prescriber transmitting the prescription.

35 (d) The use of commonly used abbreviations shall not
36 invalidate an otherwise valid prescription.

37 (e) Notwithstanding any provision of subdivisions (b)
38 and (c), prescriptions for a controlled substance classified
39 in Schedule V may be for more than one person in the
40 same family with the same medical need.



1 (f) In addition to the prescriber's record required by
2 Section 11190, any practitioner dispensing a controlled
3 substance classified in Schedule II in accordance with
4 subdivision (b) of Section 11158 shall prepare a written
5 record thereof on the official forms issued by the
6 Department of Justice, pursuant to Section 11161, and
7 shall transmit the original to the Department of Justice in
8 accordance with any rules that the department may
9 adopt for completion and transmittal of the forms.

10 ~~SEC. 4. Section 11165 of the Health and Safety Code~~
11 ~~is amended to read:~~

12 ~~11165. (a) To assist law enforcement and regulatory~~
13 ~~agencies in their efforts to control the diversion and~~
14 ~~resultant abuse of Schedule II controlled substances, and~~
15 ~~for statistical analysis, education, and research, the~~
16 ~~Department of Justice shall, contingent upon the~~
17 ~~availability of adequate funds, establish the Controlled~~
18 ~~Substance Utilization Review and Evaluation System~~
19 ~~(CURES) for the electronic monitoring of the~~
20 ~~prescribing and dispensing of Schedule II controlled~~
21 ~~substances by all practitioners authorized to prescribe or~~
22 ~~dispense these controlled substances. CURES shall be~~
23 ~~implemented as a pilot project, commencing on July 1,~~
24 ~~1997, to be administered concurrently with the existing~~
25 ~~triplicate prescription process, to examine the~~
26 ~~comparative efficiencies between the two systems.~~

27 ~~(b) The CURES pilot project shall operate under~~
28 ~~existing provisions of law to safeguard the privacy and~~
29 ~~confidentiality of patients. Data obtained from CURES~~
30 ~~shall only be provided to appropriate state, local, and~~
31 ~~federal persons or public agencies for disciplinary, civil,~~
32 ~~or criminal purposes and to other agencies or entities, as~~
33 ~~determined by the Department of Justice, for the~~
34 ~~purpose of educating practitioners and others in lieu of~~
35 ~~disciplinary, civil, or criminal actions. Data may be~~
36 ~~provided to public or private entities, as approved by the~~
37 ~~Department of Justice, for educational, peer review,~~
38 ~~statistical, or research purposes, provided that patient~~
39 ~~information, including any information that may identify~~
40 ~~the patient, is not compromised. Further, data disclosed~~



1 to any individual or agency as described in this
2 subdivision, shall not be disclosed, sold, or transferred to
3 any third party.

4 (e) The Department of Justice, in consultation with
5 the Board of Pharmacy, shall submit a report to the
6 Legislature by January 1, 1999, with annual updates also
7 due January 1, 2000, 2001, and 2002, on the CURES pilot
8 project. Specifically, these reports shall assess the ability
9 of CURES to provide complete, accurate, and timely data
10 on Schedule II controlled substances prescribed and
11 dispensed in California, the effectiveness of this
12 information in investigating and prosecuting individuals
13 suspected of diversion activities, and the feasibility of
14 replacing the current triple-copy prescription form with
15 a single copy serialized prescription form to reduce
16 existing administrative burdens. Further, the report shall
17 make recommendations regarding the replacement of
18 the existing triplicate prescription process with CURES,
19 and funding alternatives for ongoing system support.

20 (d) This section shall become inoperative on July 1,
21 2003, and as of January 1, 2004, is repealed, unless the
22 Attorney General determines, and provides timely
23 written notification to the appropriate policy committees
24 of the Legislature of that determination, that the CURES
25 program should be continued on and after July 1, 2003, on
26 the basis that the CURES program provides more timely
27 data.

28 (e) If this section remains in effect on and after July 1,
29 2003, the requirement that a prescription for a Schedule
30 II controlled substance shall be written on a triplicate
31 prescription, as set forth in subdivision (a) of Section
32 11164, shall terminate on July 1, 2003, and a prescription
33 for a Schedule II controlled substance shall instead meet
34 the requirements of subdivision (b) of Section 11164.

35 SEC. 5. Section 11167 of the Health and Safety Code
36 is amended to read:

37 11167. Notwithstanding subdivision (a) of Section
38 11164, in an emergency where failure to issue a
39 prescription may result in loss of life or intense suffering
40 or in an emergency situation as defined in Section 290.10



1 of Title 21 of the Code of Federal Regulations, an order
2 for a Schedule II controlled substance may be dispensed
3 on an oral, written, or electronic data transmission order,
4 subject to all of the following requirements:

5 (a) The order contains all information required by
6 subdivision (a) of Section 11164.

7 (b) Any written order is signed and dated by the
8 prescriber in indelible pencil or ink, and the pharmacy
9 reduces any oral or electronic data transmission order to
10 writing prior to actually dispensing the controlled
11 substance.

12 (c) The prescriber provides a triplicate prescription,
13 completed as provided by subdivision (a) of Section
14 11164, by the seventh day following the transmission of
15 the initial order; a postmark by the seventh day following
16 transmission of the initial order shall constitute
17 compliance.

18 (d) If the prescriber fails to comply with subdivision
19 (c), the pharmacy shall so notify the Bureau of Narcotic
20 Enforcement in writing within 144 hours of the
21 prescriber's failure to do so and shall make and retain a
22 written, readily retrievable record of the prescription,
23 including the date and method of notification of the
24 Bureau of Narcotic Enforcement.

25 ~~SEC. 6.~~

26 *SEC. 4.* No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

