

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1280**

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**Introduced by Assembly Member ~~Perea~~ Hill**

February 18, 2011

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~~An act to amend Section 440.20 of the Health and Safety Code, relating to health facilities. An act to amend, repeal, and add Section 11100 of, and to add and repeal Section 11100.02 of, the Health and Safety Code, relating to controlled substances.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1280, as amended, ~~Perea~~ Hill. ~~Health Facilities Disclosure Act. Ephedrine: retail sale.~~

(1) Existing law classifies controlled substances into 5 schedules, with the most restrictive limitations placed on controlled substances classified in Schedule I, and the least restrictive limitations placed on controlled substances classified in Schedule V. A controlled substance in any of the schedules may be possessed or dispensed only upon a lawful prescription, as specified. Existing law does not classify ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within any of these 5 schedules, but provides that it is a crime, punishable as specified, for a person in this state who engages in specified transactions involving those drugs to fail to submit a report to the Department of Justice of all of those transactions, or to fail to submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice, as specified. Existing law prohibits the sale of more than 3 packages or 9 grams of a nonprescription product containing ephedrine or the other drugs, as specified.

*This bill would instead provide that it is a misdemeanor, punishable as specified, for any retail distributor, except pursuant to a valid prescription from a licensed practitioner with prescriptive authority, to sell or distribute to a person specified amounts of nonprescription products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within specified time limits, to sell or distribute any of those substances to a person whose information has generated an alert, or, except under specified conditions, to sell or distribute to any purchaser a nonprescription product containing any amount of those substances. The bill would contain provisions requiring the secure storage and monitoring of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, as specified.*

*The bill would require retail distributors to transmit sale information to the National Precursor Log Exchange (NPLEx) for purposes of determining whether the sale would violate these provisions. The bill would require the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators regarding the transaction records in NPLEx, as specified. The bill would provide that the information in the system may not be used for any purpose other than to meet the requirements of, or comply with, this act or a certain federal act, as specified. The bill would specify legislative findings and intent. The bill's provisions would remain in effect only until January 1, 2018. By creating a new crime, this bill would impose a state-mandated local program.*

*(2) 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.*

~~Existing law, the Health Facilities Disclosure Act, requires health care facilities to provide to the primary attending health care practitioner a copy of the complete itemized charges for services rendered by the health facility to the health care practitioner's patient when the primary attending health care practitioner is not employed by the health facility nor is a member of an integrated group practice that provided the health facility services, as specified.~~

~~This bill would make a technical, nonsubstantive change to a provision of the Health Facilities Disclosure Act.~~

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

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

- 1     SECTION 1. Section 11100 of the Health and Safety Code is  
2     amended to read:  
3     11100. (a) Any manufacturer, wholesaler, retailer, or other  
4     person or entity in this state that sells, transfers, or otherwise  
5     furnishes any of the following substances to any person or entity  
6     in this state or any other state shall submit a report to the  
7     Department of Justice of all of those transactions:  
8         (1) Phenyl-2-propanone.  
9         (2) Methylamine.  
10        (3) Ethylamine.  
11        (4) D-lysergic acid.  
12        (5) Ergotamine tartrate.  
13        (6) Diethyl malonate.  
14        (7) Malonic acid.  
15        (8) Ethyl malonate.  
16        (9) Barbituric acid.  
17        (10) Piperidine.  
18        (11) N-acetylanthranilic acid.  
19        (12) Pyrrolidine.  
20        (13) Phenylacetic acid.  
21        (14) Anthranilic acid.  
22        (15) Morpholine.  
23        (16) Ephedrine.  
24        (17) Pseudoephedrine.  
25        (18) Norpseudoephedrine.  
26        (19) Phenylpropanolamine.  
27        (20) Propionic anhydride.  
28        (21) Isosafrole.  
29        (22) Safrole.  
30        (23) Piperonal.  
31        (24) Thionylchloride.  
32        (25) Benzyl cyanide.  
33        (26) Ergonovine maleate.  
34        (27) N-methylephedrine.  
35        (28) N-ethylephedrine.

- 1 (29) N-methylpseudoephedrine.  
2 (30) N-ethylpseudoephedrine.  
3 (31) Chloroephedrine.  
4 (32) Chloropseudoephedrine.  
5 (33) Hydriodic acid.  
6 (34) Gamma-butyrolactone, including butyrolactone;  
7 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;  
8 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;  
9 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;  
10 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone  
11 with Chemical Abstract Service number (96-48-0).  
12 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;  
13 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;  
14 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene  
15 1,4-diol with Chemical Abstract Service number (110-63-4).  
16 (36) Red phosphorus, including white phosphorus,  
17 hypophosphorous acid and its salts, ammonium hypophosphite,  
18 calcium hypophosphite, iron hypophosphite, potassium  
19 hypophosphite, manganese hypophosphite, magnesium  
20 hypophosphite, sodium hypophosphite, and phosphorous acid and  
21 its salts.  
22 (37) Iodine or tincture of iodine.  
23 (38) Any of the substances listed by the Department of Justice  
24 in regulations promulgated pursuant to subdivision (b).  
25 (b) The Department of Justice may adopt rules and regulations  
26 in accordance with Chapter 3.5 (commencing with Section 11340)  
27 of Part 1 of Division 3 of Title 2 of the Government Code that add  
28 substances to subdivision (a) if the substance is a precursor to a  
29 controlled substance and delete substances from subdivision (a).  
30 However, no regulation adding or deleting a substance shall have  
31 any effect beyond March 1 of the year following the calendar year  
32 during which the regulation was adopted.  
33 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other  
34 person or entity in this state, prior to selling, transferring, or  
35 otherwise furnishing any substance specified in subdivision (a) to  
36 any person or business entity in this state or any other state, shall  
37 require ~~(A)~~ (i) a letter of authorization from that person or business  
38 entity that includes the currently valid business license number or  
39 federal Drug Enforcement Administration (DEA) registration  
40 number, the address of the business, and a full description of how

the substance is to be used, and ~~(B)~~ (ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, “proper identification” for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller’s permit identification number; city or county business license number; license issued by the ~~California State Department of Health Services~~; *Public Health*; registration number issued by the ~~Federal~~ *federal* Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the ~~California~~ Department of Justice; driver’s license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision

(c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) A state-licensed health care facility that administers or furnishes a substance to its patients.

(6) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the ~~federal~~ *Federal* Food, Drug, and Cosmetic Act (21 U.S.C. Sec.

301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to ~~subdivision~~ *subsection (d) or (e)* of Section 814 of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

~~(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.); or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.~~

~~(4)~~

(3) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

~~(h) For the purposes of this article, the following terms have the following meanings:~~

~~(1) “Drug store” is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(2) “General merchandise store” is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(3) “Grocery store” is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams;~~



1 ounces, or other similar measure. In no instance shall the dosage  
2 units exceed 15 milligrams of phenylpropanolamine or  
3 pseudoephedrine per five milliliters of liquid product, except for  
4 liquid products primarily intended for administration to children  
5 under two years of age for which the recommended dosage unit  
6 does not exceed two milliliters and the total package content does  
7 not exceed one fluid ounce.

8 (5) “Retail distributor” means a grocery store, general  
9 merchandise store, drugstore, or other related entity, the activities  
10 of which, as a distributor of ephedrine, pseudoephedrine,  
11 norpseudoephedrine, or phenylpropanolamine products, are limited  
12 exclusively to the sale of ephedrine, pseudoephedrine,  
13 norpseudoephedrine, or phenylpropanolamine products for personal  
14 use both in number of sales and volume of sales, either directly to  
15 walk-in customers or in face-to-face transactions by direct sales.  
16 “Retail distributor” includes an entity that makes a direct sale, but  
17 does not include the parent company of that entity if the company  
18 is not involved in direct sales regulated by this article.

19 (6) “Sale for personal use” means the sale in a single transaction  
20 to an individual customer for a legitimate medical use of a product  
21 containing ephedrine, pseudoephedrine, norpseudoephedrine, or  
22 phenylpropanolamine in dosages at or below that specified in  
23 paragraph (3) of subdivision (g). “Sale for personal use” also  
24 includes the sale of those products to employers to be dispensed  
25 to employees from first-aid kits or medicine chests.

26 (i) It is the intent of the Legislature that this section shall  
27 preempt all local ordinances or regulations governing the sale by  
28 a retail distributor of over-the-counter products containing  
29 ephedrine, pseudoephedrine, norpseudoephedrine, or  
30 phenylpropanolamine.

31 (h) *This section shall remain in effect only until January 1, 2018,*  
32 *and as of that date is repealed, unless a later enacted statute, that*  
33 *is enacted before January 1, 2018, deletes or extends that date.*

34 SEC. 2. *Section 11100 is added to the Health and Safety Code,*  
35 *to read:*

36 11100. (a) *Any manufacturer, wholesaler, retailer, or other*  
37 *person or entity in this state that sells, transfers, or otherwise*  
38 *furnishes any of the following substances to any person or entity*  
39 *in this state or any other state shall submit a report to the*  
40 *Department of Justice of all of those transactions:*

- 1 (1) *Phenyl-2-propanone.*
- 2 (2) *Methylamine.*
- 3 (3) *Ethylamine.*
- 4 (4) *D-lysergic acid.*
- 5 (5) *Ergotamine tartrate.*
- 6 (6) *Diethyl malonate.*
- 7 (7) *Malonic acid.*
- 8 (8) *Ethyl malonate.*
- 9 (9) *Barbituric acid.*
- 10 (10) *Piperidine.*
- 11 (11) *N-acetylanthranilic acid.*
- 12 (12) *Pyrrolidine.*
- 13 (13) *Phenylacetic acid.*
- 14 (14) *Anthranilic acid.*
- 15 (15) *Morpholine.*
- 16 (16) *Ephedrine.*
- 17 (17) *Pseudoephedrine.*
- 18 (18) *Norpseudoephedrine.*
- 19 (19) *Phenylpropanolamine.*
- 20 (20) *Propionic anhydride.*
- 21 (21) *Isosafrole.*
- 22 (22) *Safrole.*
- 23 (23) *Piperonal.*
- 24 (24) *Thionylchloride.*
- 25 (25) *Benzyl cyanide.*
- 26 (26) *Ergonovine maleate.*
- 27 (27) *N-methylephedrine.*
- 28 (28) *N-ethylephedrine.*
- 29 (29) *N-methylpseudoephedrine.*
- 30 (30) *N-ethylpseudoephedrine.*
- 31 (31) *Chloroephedrine.*
- 32 (32) *Chloropseudoephedrine.*
- 33 (33) *Hydriodic acid.*
- 34 (34) *Gamma-butyrolactone, including butyrolactone;*
- 35 *butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;*
- 36 *dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;*
- 37 *1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;*
- 38 *3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone*
- 39 *with Chemical Abstract Service number (96-48-0).*

(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).

(36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.

(37) Iodine or tincture of iodine.

(38) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (i) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, "proper identification" for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number;

1 license issued by the State Department of Public Health;  
2 registration number issued by the federal Drug Enforcement  
3 Administration; precursor business permit number issued by the  
4 Bureau of Narcotic Enforcement of the Department of Justice;  
5 driver's license; or other identification issued by a state.

6 (2) (A) Any manufacturer, wholesaler, retailer, or other person  
7 or entity in this state that exports a substance specified in  
8 subdivision (a) to any person or business entity located in a foreign  
9 country shall, on or before the date of exportation, submit to the  
10 Department of Justice a notification of that transaction, which  
11 notification shall include the name and quantity of the substance  
12 to be exported and the name, address, and, if assigned by the  
13 foreign country or subdivision thereof, business identification  
14 number of the person or business entity located in a foreign country  
15 importing the substance.

16 (B) The department may authorize the submission of the  
17 notification on a monthly basis with respect to repeated, regular  
18 transactions between an exporter and an importer involving a  
19 substance specified in subdivision (a), if the department determines  
20 that a pattern of regular supply of the substance exists between  
21 the exporter and importer and that the importer has established  
22 a record of utilization of the substance for lawful purposes.

23 (d) (1) Any manufacturer, wholesaler, retailer, or other person  
24 or entity in this state that sells, transfers, or otherwise furnishes  
25 a substance specified in subdivision (a) to a person or business  
26 entity in this state or any other state shall, not less than 21 days  
27 prior to delivery of the substance, submit a report of the  
28 transaction, which includes the identification information specified  
29 in subdivision (c), to the Department of Justice. The Department  
30 of Justice may authorize the submission of the reports on a monthly  
31 basis with respect to repeated, regular transactions between the  
32 furnisher and the recipient involving the substance or substances  
33 if the Department of Justice determines that a pattern of regular  
34 supply of the substance or substances exists between the  
35 manufacturer, wholesaler, retailer, or other person or entity that  
36 sells, transfers, or otherwise furnishes the substance or substances  
37 and the recipient of the substance or substances, and the recipient  
38 has established a record of utilization of the substance or  
39 substances for lawful purposes.

1     (2) The person selling, transferring, or otherwise furnishing  
2     any substance specified in subdivision (a) shall affix his or her  
3     signature or otherwise identify himself or herself as a witness to  
4     the identification of the purchaser or purchasing individual, and  
5     shall, if a common carrier is used, maintain a manifest of the  
6     delivery to the purchaser for three years.

7     (e) This section shall not apply to any of the following:

8     (1) Any pharmacist or other authorized person who sells or  
9     furnishes a substance upon the prescription of a physician, dentist,  
10    podiatrist, or veterinarian.

11    (2) Any physician, dentist, podiatrist, or veterinarian who  
12    administers or furnishes a substance to his or her patients.

13    (3) Any manufacturer or wholesaler licensed by the California  
14    State Board of Pharmacy that sells, transfers, or otherwise  
15    furnishes a substance to a licensed pharmacy, physician, dentist,  
16    podiatrist, or veterinarian, or a retail distributor as defined in  
17    subdivision (h), provided that the manufacturer or wholesaler  
18    submits records of any suspicious sales or transfers as determined  
19    by the Department of Justice.

20    (4) Any analytical research facility that is registered with the  
21    federal Drug Enforcement Administration of the United States  
22    Department of Justice.

23    (5) A state-licensed health care facility that administers or  
24    furnishes a substance to its patients.

25    (6) (A) Any sale, transfer, furnishing, or receipt of any product  
26    that contains ephedrine, pseudoephedrine, norpseudoephedrine,  
27    or phenylpropanolamine and which is lawfully sold, transferred,  
28    or furnished over the counter without a prescription pursuant to  
29    the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et  
30    seq.) or regulations adopted thereunder. However, this section  
31    shall apply to preparations in solid or liquid dosage form, except  
32    pediatric liquid forms, as defined, containing ephedrine,  
33    pseudoephedrine, norpseudoephedrine, or phenylpropanolamine  
34    where the individual transaction involves more than three packages  
35    or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,  
36    or phenylpropanolamine.

37    (B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or  
38    phenylpropanolamine product subsequently removed from  
39    exemption pursuant to Section 814 of Title 21 of the United States  
40    Code shall similarly no longer be exempt from any state reporting

1 or permitting requirement, unless otherwise reinstated pursuant  
2 to subsection (d) of Section 814 of Title 21 of the United States  
3 Code as an exempt product.

4 (7) The sale, transfer, furnishing, or receipt of any betadine or  
5 povidone solution with an iodine content not exceeding 1 percent  
6 in containers of eight ounces or less, or any tincture of iodine not  
7 exceeding 2 percent in containers of one ounce or less, that is sold  
8 over the counter.

9 (8) Any transfer of a substance specified in subdivision (a) for  
10 purposes of lawful disposal as waste.

11 (f) (1) Any person specified in subdivision (a) or (d) who does  
12 not submit a report as required by that subdivision or who  
13 knowingly submits a report with false or fictitious information  
14 shall be punished by imprisonment in a county jail not exceeding  
15 six months, by a fine not exceeding five thousand dollars (\$5,000),  
16 or by both the fine and imprisonment.

17 (2) Any person specified in subdivision (a) or (d) who has  
18 previously been convicted of a violation of paragraph (1) shall,  
19 upon a subsequent conviction thereof, be punished by imprisonment  
20 in the state prison, or by imprisonment in a county jail not  
21 exceeding one year, by a fine not exceeding one hundred thousand  
22 dollars (\$100,000), or by both the fine and imprisonment.

23 (g) (1) Except as otherwise provided in subparagraph (A) of  
24 paragraph (6) of subdivision (e), it is unlawful for any  
25 manufacturer, wholesaler, retailer, or other person to sell, transfer,  
26 or otherwise furnish a substance specified in subdivision (a) to a  
27 person under 18 years of age.

28 (2) Except as otherwise provided in subparagraph (A) of  
29 paragraph (6) of subdivision (e), it is unlawful for any person  
30 under 18 years of age to possess a substance specified in  
31 subdivision (a).

32 (3) Notwithstanding any other law, it is unlawful for any retail  
33 distributor to (A) sell in a single transaction more than three  
34 packages of a product that he or she knows to contain ephedrine,  
35 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,  
36 or (B) knowingly sell more than nine grams of ephedrine,  
37 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,  
38 other than pediatric liquids as defined. Except as otherwise  
39 provided in this section, the three package per transaction  
40 limitation or nine gram per transaction limitation imposed by this

paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine,

1 norpseudoephedrine, or phenylpropanolamine products for  
2 personal use both in number of sales and volume of sales, either  
3 directly to walk-in customers or in face-to-face transactions by  
4 direct sales. “Retail distributor” includes an entity that makes a  
5 direct sale, but does not include the parent company of that entity  
6 if the company is not involved in direct sales regulated by this  
7 article.

8 (6) “Sale for personal use” means the sale in a single  
9 transaction to an individual customer for a legitimate medical use  
10 of a product containing ephedrine, pseudoephedrine,  
11 norpseudoephedrine, or phenylpropanolamine in dosages at or  
12 below that specified in paragraph (3) of subdivision (g). “Sale for  
13 personal use” also includes the sale of those products to employers  
14 to be dispensed to employees from first aid kits or medicine chests.

15 (i) It is the intent of the Legislature that this section shall  
16 preempt all local ordinances or regulations governing the sale by  
17 a retail distributor of over-the-counter products containing  
18 ephedrine, pseudoephedrine, norpseudoephedrine, or  
19 phenylpropanolamine.

20 (j) This section shall become operative on January 1, 2018.

21 SEC. 3. Section 11100.02 is added to the Health and Safety  
22 Code, to read:

23 11100.02. (a) Notwithstanding any other law, it is unlawful  
24 for any retail distributor to knowingly do the following, except  
25 pursuant to a valid prescription from a licensed practitioner with  
26 prescriptive authority:

27 (1) To sell or distribute to the same purchaser within any 30-day  
28 period more than nine grams, or within any day more than 3.6  
29 grams, of ephedrine base, pseudoephedrine base,  
30 norpseudoephedrine base, or phenylpropanolamine base contained  
31 in any product that is lawfully sold, transferred, or furnished over  
32 the counter without a prescription pursuant to the Federal Food,  
33 Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations  
34 adopted thereunder, unless exempted from the requirements of the  
35 federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by  
36 the federal Drug Enforcement Administration pursuant to Section  
37 814 of Title 21 of the United States Code.

38 (2) To sell or distribute any ephedrine, pseudoephedrine,  
39 norpseudoephedrine, or phenylpropanolamine to a person whose



1 information has generated an alert as described in paragraph (3)  
2 of subdivision (d) regarding that sale.

3 (3) To sell or distribute to any purchaser a nonprescription  
4 product containing any amount of ephedrine, pseudoephedrine,  
5 norpseudoephedrine, or phenylpropanolamine, except under the  
6 following conditions:

7 (A) The purchaser shall produce valid government-issued photo  
8 identification.

9 (B) The purchaser shall sign a written or electronic log showing  
10 the following:

11 (i) The date and time of the transaction.

12 (ii) The identification number presented.

13 (iii) The agency issuing the identification and the type of  
14 identification issued.

15 (iv) The name, date of birth, and address of the purchaser.

16 (v) The amount of ephedrine base, pseudoephedrine base,  
17 norpseudoephedrine base, or phenylpropanolamine base contained  
18 in the material, compound, mixture, or preparation sold.

19 (b) The retail distributor shall store any product containing any  
20 amount of ephedrine, pseudoephedrine, norpseudoephedrine, or  
21 phenylpropanolamine either behind the counter or in a locked  
22 cabinet so that the customer does not have access to the product.

23 (c) (1) To facilitate the monitoring of the sales of  
24 nonprescription products containing ephedrine, pseudoephedrine,  
25 norpseudoephedrine, or phenylpropanolamine, the retail  
26 distributor shall record all of the following information at the point  
27 of sale regarding the proposed transaction for the purpose of  
28 complying with this section or the federal Combat  
29 Methamphetamine Epidemic Act of 2005, or any regulation  
30 adopted pursuant to this section or that act, and for no other  
31 purpose:

32 (A) The date and time of the transaction.

33 (B) The identification number of the purchaser, issuing agency  
34 of the identification, and the type of identification used.

35 (C) The name, date of birth, and address of the purchaser  
36 verified through a photo identification of the purchaser.

37 (D) The name, quantity of packages, and total gram weight of  
38 ephedrine base, pseudoephedrine base, norpseudoephedrine base,  
39 or phenylpropanolamine base contained in a product or products  
40 purchased, received, or otherwise acquired.

1     (E) *The name or initials of the person making the sale.*

2     (2) *Beginning January 1, 2013, the retail distributor shall*  
3 *transmit the information immediately to the National Precursor*  
4 *Log Exchange (NPLEx) administered by the National Association*  
5 *of Drug Diversion Investigators (NADDI) for purposes of*  
6 *determining whether the proposed sale would violate this section*  
7 *and therefore may not proceed, provided that the NPLEx system*  
8 *is available to retailers in the state without a charge for accessing*  
9 *the system. The transaction information shall not be accessed,*  
10 *stored, or used by the retail distributor for any purpose other than*  
11 *to meet the requirements set forth in this section or to comply with*  
12 *the provisions of the federal Combat Methamphetamine Epidemic*  
13 *Act of 2005, or any regulation adopted pursuant to this section or*  
14 *that act. The retail distributor shall not maintain a separate copy*  
15 *of the transaction information except as required by the federal*  
16 *Combat Methamphetamine Epidemic Act of 2005.*

17     (3) (A) *A retail distributor shall provide notice electronically,*  
18 *in writing, or by signage to purchasers that the information*  
19 *collected pursuant to the federal Combat Methamphetamine*  
20 *Epidemic Act of 2005 and this section shall be provided to law*  
21 *enforcement for purposes of determining the legality of a proposed*  
22 *sale.*

23     (B) *The Legislature finds that it is necessary for probable cause*  
24 *to be demonstrated to trigger an investigation in connection with*  
25 *an individual whose requested purchase is denied by the system*  
26 *a single time.*

27     (4) *This subdivision shall not be construed to require a retail*  
28 *distributor to maintain state-required records relating to the sale*  
29 *of products containing ephedrine, pseudoephedrine,*  
30 *norpseudoephedrine, or phenylpropanolamine in a separate*  
31 *location or log from records required by federal law to be kept*  
32 *with respect to those products.*

33     (5) *The recording requirements specified in this subdivision*  
34 *shall not apply to the sale of a single package containing not more*  
35 *than 60 milligrams of pseudoephedrine, consistent with the federal*  
36 *Combat Methamphetamine Epidemic Act of 2005.*

37     (6) *If a retail distributor experiences mechanical or electronic*  
38 *failure of the system and is unable to comply with the recording*  
39 *requirements of this subdivision, the retail distributor shall*  
40 *maintain the required records in a written log or an alternative*

1 *electronic recordkeeping mechanism until the retail distributor is*  
2 *able to comply with the recording requirements of this subdivision.*

3 *(d) (1) Provided that the department executes a memorandum*  
4 *of understanding (MOU) with NADDI governing access, pursuant*  
5 *to this subdivision, NADDI shall forward California transaction*  
6 *records in NPLeX to the Department of Justice weekly and provide*  
7 *real-time access to NPLeX information through the NPLeX online*  
8 *portal to law enforcement in the state as authorized by the*  
9 *department.*

10 *(2) The system shall allow retail distributors of products*  
11 *containing ephedrine, pseudoephedrine, norpseudoephedrine, or*  
12 *phenylpropanolamine to enter into the database the information*  
13 *specified in subdivision (d) regarding the proposed sale of those*  
14 *products.*

15 *(3) The system shall be capable of providing the retail*  
16 *distributor with an immediate real-time alert any time any*  
17 *provision of this section is being violated by a proposed sale.*

18 *(4) The MOU shall state that no party to the MOU nor any entity*  
19 *under contract to provide the electronic authorization and*  
20 *monitoring system shall be authorized to use the information*  
21 *contained in the system for any purpose other than those set forth*  
22 *in this section, the federal Combat Methamphetamine Epidemic*  
23 *Act of 2005, or any regulation adopted pursuant to this section or*  
24 *that act. However, the system operator shall be authorized to*  
25 *analyze the information for the sole purpose of assessing and*  
26 *improving the performance and efficacy of the system. In addition,*  
27 *the MOU shall require that any retail distributor's access to the*  
28 *electronic authorization and monitoring system's database is*  
29 *limited solely to records of sales transactions made by that retail*  
30 *distributor, which access shall be solely for purposes of complying*  
31 *with the federal Combat Methamphetamine Epidemic Act of 2005*  
32 *or this section, or to respond to a duly authorized law enforcement*  
33 *request or court order for information collected under that act or*  
34 *this section.*

35 *(5) The system's security program shall comply with the security*  
36 *standards for the Criminal Justice Information System of the*  
37 *Federal Bureau of Investigation and may be audited once a year*  
38 *by the department.*

39 *(6) A retail distributor's use of the system shall be subject to*  
40 *Section 56.101 of the Civil Code. A retail distributor shall not*

1 maintain any records collected under this system for longer than  
2 two years, or as otherwise required by the federal Combat  
3 Methamphetamine Epidemic Act of 2005.

4 (7) Law enforcement access to the system shall be recorded by  
5 means of a unique access code for each individual accessing the  
6 system. Each user's history shall be maintained and may be audited  
7 by the department.

8 (8) The department may submit recommendations to NADDI  
9 regarding system changes to assist in identifying false identification  
10 cards.

11 (e) The State Board of Equalization shall notify all retailers  
12 about the requirement to submit transactions to NPLeX no later  
13 than September 1, 2012.

14 (f) This section shall not apply to a health care practitioner with  
15 prescriptive authority who is currently licensed in this state.

16 (g) (1) A first violation of this section is a misdemeanor.

17 (2) Any person who has previously been convicted of a violation  
18 of this section shall, upon a subsequent conviction thereof, be  
19 punished by imprisonment in a county jail not exceeding one year,  
20 by a fine not exceeding ten thousand dollars (\$10,000), or by both  
21 the fine and imprisonment.

22 (h) For the purposes of this section, the following terms have  
23 the following meanings:

24 (1) "Department" means the Department of Justice.

25 (2) "Drug store" is any entity described in Code 5912 of the  
26 Standard Industrial Classification (SIC) Manual published by the  
27 United States Office of Management and Budget, 1987 edition.

28 (3) "General merchandise store" is any entity described in  
29 Codes 5311 to 5399, inclusive, and Code 5499 of the Standard  
30 Industrial Classification (SIC) Manual published by the United  
31 States Office of Management and Budget, 1987 edition.

32 (4) "Grocery store" is any entity described in Code 5411 of the  
33 Standard Industrial Classification (SIC) Manual published by the  
34 United States Office of Management and Budget, 1987 edition.

35 (5) "Retail distributor" means a grocery store, general  
36 merchandise store, drugstore, or other related entity, the activities  
37 of which, as a distributor of ephedrine, pseudoephedrine,  
38 norpseudoephedrine, or phenylpropanolamine products, are limited  
39 exclusively to the sale of ephedrine, pseudoephedrine,  
40 norpseudoephedrine, or phenylpropanolamine products for

personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in amounts at or below that specified in subdivision (a). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

SECTION 1. ~~Section 440.20 of the Health and Safety Code is amended to read:~~

~~440.20. Within seven days after completion of the patient's itemized bill, a health facility shall provide to the primary attending health care practitioner a copy, upon written request specifying the individual patient, of the complete itemized charges for services rendered by the health facility to the health care practitioner's patient when the primary attending health care practitioner is not~~

- 1 ~~employed by the health facility nor is a member of an integrated~~
- 2 ~~group practice that provided the health facility services.~~

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