

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1280

Introduced by Assembly Member Hill
(Coauthor: Assembly Member Hagman)

February 18, 2011

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, Hill. 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.

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 11100 of the Health and Safety Code is
2 amended to read:

1 11100. (a) Any manufacturer, wholesaler, retailer, or other
2 person or entity in this state that sells, transfers, or otherwise
3 furnishes any of the following substances to any person or entity
4 in this state or any other state shall submit a report to the
5 Department of Justice of all of those transactions:

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

1 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
2 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
3 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
4 with Chemical Abstract Service number (96-48-0).

5 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
6 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
7 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
8 1,4-diol with Chemical Abstract Service number (110-63-4).

9 (36) Red phosphorus, including white phosphorus,
10 hypophosphorous acid and its salts, ammonium hypophosphite,
11 calcium hypophosphite, iron hypophosphite, potassium
12 hypophosphite, manganese hypophosphite, magnesium
13 hypophosphite, sodium hypophosphite, and phosphorous acid and
14 its salts.

15 (37) Iodine or tincture of iodine.

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

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

26 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
27 person or entity in this state, prior to selling, transferring, or
28 otherwise furnishing any substance specified in subdivision (a) to
29 any person or business entity in this state or any other state, shall
30 require (i) a letter of authorization from that person or business
31 entity that includes the currently valid business license number or
32 federal Drug Enforcement Administration (DEA) registration
33 number, the address of the business, and a full description of how
34 the substance is to be used, and (ii) proper identification from the
35 purchaser. The manufacturer, wholesaler, retailer, or other person
36 or entity in this state shall retain this information in a readily
37 available manner for three years. The requirement for a full
38 description of how the substance is to be used does not require the
39 person or business entity to reveal their chemical processes that
40 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 State Department of Public Health; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the 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

1 of the substance or substances, and the recipient has established a
2 record of utilization of the substance or substances for lawful
3 purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) Except as otherwise provided in subparagraph (A) of
33 paragraph (6) of subdivision (e), it is unlawful for any person under
34 18 years of age to possess a substance specified in subdivision (a).

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

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

(h) 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. 2. Section 11100 is added to the Health and Safety Code, to read:

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

- (1) Phenyl-2-propanone.
- (2) Methylamine.
- (3) Ethylamine.
- (4) D-lysergic acid.
- (5) Ergotamine tartrate.
- (6) Diethyl malonate.
- (7) Malonic acid.
- (8) Ethyl malonate.
- (9) Barbituric acid.
- (10) Piperidine.
- (11) N-acetylanthranilic acid.
- (12) Pyrrolidine.
- (13) Phenylacetic acid.
- (14) Anthranilic acid.
- (15) Morpholine.
- (16) Ephedrine.
- (17) Pseudoephedrine.
- (18) Norpseudoephedrine.
- (19) Phenylpropanolamine.
- (20) Propionic anhydride.
- (21) Isosafrole.
- (22) Safrole.
- (23) Piperonal.
- (24) Thionylchloride.
- (25) Benzyl cyanide.
- (26) Ergonovine maleate.
- (27) N-methylephedrine.
- (28) N-ethylephedrine.
- (29) N-methylpseudoephedrine.
- (30) N-ethylpseudoephedrine.

(31) Chloroephedrine.

(32) Chloropseudoephedrine.

(33) Hydriodic acid.

(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone 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

1 or entity in this state shall retain this information in a readily
2 available manner for three years. The requirement for a full
3 description of how the substance is to be used does not require the
4 person or business entity to reveal their chemical processes that
5 are typically considered trade secrets and proprietary information.

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

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

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

32 (d) (1) Any manufacturer, wholesaler, retailer, or other person
33 or entity in this state that sells, transfers, or otherwise furnishes a
34 substance specified in subdivision (a) to a person or business entity
35 in this state or any other state shall, not less than 21 days prior to
36 delivery of the substance, submit a report of the transaction, which
37 includes the identification information specified in subdivision
38 (c), to the Department of Justice. The Department of Justice may
39 authorize the submission of the reports on a monthly basis with
40 respect to repeated, regular transactions between the furnisher and

1 the recipient involving the substance or substances if the
2 Department of Justice determines that a pattern of regular supply
3 of the substance or substances exists between the manufacturer,
4 wholesaler, retailer, or other person or entity that sells, transfers,
5 or otherwise furnishes the substance or substances and the recipient
6 of the substance or substances, and the recipient has established a
7 record of utilization of the substance or substances for lawful
8 purposes.

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

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

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

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

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

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

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

33 (6) (A) Any sale, transfer, furnishing, or receipt of any product
34 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
35 or phenylpropanolamine and which is lawfully sold, transferred,
36 or furnished over the counter without a prescription pursuant to
37 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
38 seq.) or regulations adopted thereunder. However, this section
39 shall apply to preparations in solid or liquid dosage form, except
40 pediatric liquid forms, as defined, containing ephedrine,

1 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
2 where the individual transaction involves more than three packages
3 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
4 or phenylpropanolamine.

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

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

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

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

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

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

36 (2) Except as otherwise provided in subparagraph (A) of
37 paragraph (6) of subdivision (e), it is unlawful for any person under
38 18 years of age to possess a substance specified in subdivision (a).

39 (3) Notwithstanding any other law, it is unlawful for any retail
40 distributor to (A) sell in a single transaction more than three

1 packages of a product that he or she knows to contain ephedrine,
 2 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
 3 or (B) knowingly sell more than nine grams of ephedrine,
 4 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
 5 other than pediatric liquids as defined. Except as otherwise
 6 provided in this section, the three package per transaction limitation
 7 or nine gram per transaction limitation imposed by this paragraph
 8 shall apply to any product that is lawfully sold, transferred, or
 9 furnished over the counter without a prescription pursuant to the
 10 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
 11 seq.), or regulations adopted thereunder, unless exempted from
 12 the requirements of the federal Controlled Substances Act (21
 13 U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement
 14 Administration pursuant to Section 814 of Title 21 of the United
 15 States Code.

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

17 (B) Any person who has previously been convicted of a violation
 18 of this subdivision 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 article, the following terms have
 23 the following meanings:

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

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

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

34 (4) "Pediatric liquid" means a nonencapsulated liquid whose
 35 unit measure according to product labeling is stated in milligrams,
 36 ounces, or other similar measure. In no instance shall the dosage
 37 units exceed 15 milligrams of phenylpropanolamine or
 38 pseudoephedrine per five milliliters of liquid product, except for
 39 liquid products primarily intended for administration to children
 40 under two years of age for which the recommended dosage unit

1 does not exceed two milliliters and the total package content does
2 not exceed one fluid ounce.

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

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

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

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

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

29 11100.02. (a) Notwithstanding any other law, it is unlawful
30 for any retail distributor to knowingly do the following, except
31 pursuant to a valid prescription from a licensed practitioner with
32 prescriptive authority:

33 (1) To sell or distribute to the same purchaser within any 30-day
34 period more than nine grams, or within any day more than 3.6
35 grams, of ephedrine base, pseudoephedrine base,
36 norpseudoephedrine base, or phenylpropanolamine base contained
37 in any product that is lawfully sold, transferred, or furnished over
38 the counter without a prescription pursuant to the Federal Food,
39 Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations
40 adopted thereunder, unless exempted from the requirements of the

1 federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by
2 the federal Drug Enforcement Administration pursuant to Section
3 814 of Title 21 of the United States Code.

4 (2) To sell or distribute any ephedrine, pseudoephedrine,
5 norpseudoephedrine, or phenylpropanolamine to a person whose
6 information has generated an alert as described in paragraph (3)
7 of subdivision (d) regarding that sale.

8 (3) To sell or distribute to any purchaser a nonprescription
9 product containing any amount of ephedrine, pseudoephedrine,
10 norpseudoephedrine, or phenylpropanolamine, except under the
11 following conditions:

12 (A) The purchaser shall produce valid government-issued photo
13 identification.

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

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

17 (ii) The identification number presented.

18 (iii) The agency issuing the identification and the type of
19 identification issued.

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

21 (v) The amount of ephedrine base, pseudoephedrine base,
22 norpseudoephedrine base, or phenylpropanolamine base contained
23 in the material, compound, mixture, or preparation sold.

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

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

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

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

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

1 (D) The name, quantity of packages, and total gram weight of
2 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
3 or phenylpropanolamine base contained in a product or products
4 purchased, received, or otherwise acquired.

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

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

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

27 (B) The Legislature finds that it is necessary for probable cause
28 to be demonstrated to trigger an investigation in connection with
29 an individual whose requested purchase is denied by the system a
30 single time.

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

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

1 (6) If a retail distributor experiences mechanical or electronic
2 failure of the system and is unable to comply with the recording
3 requirements of this subdivision, the retail distributor shall maintain
4 the required records in a written log or an alternative electronic
5 recordkeeping mechanism until the retail distributor is able to
6 comply with the recording requirements of this subdivision.

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

14 (2) The system shall allow retail distributors of products
15 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
16 phenylpropanolamine to enter into the database the information
17 specified in subdivision (d) regarding the proposed sale of those
18 products.

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

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

39 (5) The system's security program shall comply with the security
40 standards for the Criminal Justice Information System of the

1 Federal Bureau of Investigation and may be audited once a year
2 by the department.

3 (6) A retail distributor's use of the system shall be subject to
4 Section ~~56.104~~ 56.10 of the Civil Code. A retail distributor shall
5 not maintain any records collected under this system for longer
6 than two years, or as otherwise required by the federal Combat
7 Methamphetamine Epidemic Act of 2005.

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

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

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

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

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

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

26 (h) For the purposes of this section, the following terms have
27 the following meanings:

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

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

32 (3) "General merchandise store" is any entity described in Codes
33 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial
34 Classification (SIC) Manual published by the United States Office
35 of Management and Budget, 1987 edition.

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

39 (5) "Retail distributor" means a grocery store, general
40 merchandise store, drugstore, or other related entity, the activities

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

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

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

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

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