

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN ASSEMBLY MAY 26, 2011

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, on and after July 1, 2012, 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 require that the system be available to the department and state law enforcement at no charge and would prohibit the Department of Justice or any other state agency from bearing any cost for the development, installation, or maintenance of the system.* 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.

This bill would incorporate changes to Section 11100 of the Health and Safety Code made by AB 109, which has been chaptered but is not operative, to become operative only if AB 109 becomes operative.

(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:

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.

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

1 federal Drug Enforcement Administration (DEA) registration
2 number, the address of the business, and a full description of how
3 the substance is to be used, and (ii) proper identification from the
4 purchaser. The manufacturer, wholesaler, retailer, or other person
5 or entity in this state shall retain this information in a readily
6 available manner for three years. The requirement for a full
7 description of how the substance is to be used does not require the
8 person or business entity to reveal their chemical processes that
9 are typically considered trade secrets and proprietary information.

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

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

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

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

1 includes the identification information specified in subdivision
2 (c), to the Department of Justice. The Department of Justice may
3 authorize the submission of the reports on a monthly basis with
4 respect to repeated, regular transactions between the furnisher and
5 the recipient involving the substance or substances if the
6 Department of Justice determines that a pattern of regular supply
7 of the substance or substances exists between the manufacturer,
8 wholesaler, retailer, or other person or entity that sells, transfers,
9 or otherwise furnishes the substance or substances and the recipient
10 of the substance or substances, and the recipient has established a
11 record of utilization of the substance or substances for lawful
12 purposes.

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

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

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

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

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

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

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

37 (6) (A) Any sale, transfer, furnishing, or receipt of any product
38 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
39 or phenylpropanolamine and which is lawfully sold, transferred,
40 or furnished over the counter without a prescription pursuant to

1 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
2 seq.) or regulations adopted thereunder. However, this section
3 shall apply to preparations in solid or liquid dosage form, except
4 pediatric liquid forms, as defined, containing ephedrine,
5 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
6 where the individual transaction involves more than three packages
7 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine.

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

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

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

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

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

35 (g) (1) Except as otherwise provided in subparagraph (A) of
36 paragraph (6) of subdivision (e), it is unlawful for any
37 manufacturer, wholesaler, retailer, or other person to sell, transfer,
38 or otherwise furnish a substance specified in subdivision (a) to a
39 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) (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) 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. 1.5. Section 11100 of the Health and Safety Code, as amended by Section 145 of Chapter 15 of the Statutes of 2011, is amended 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.

- 1 (21) Isosafrole.
- 2 (22) Safrole.
- 3 (23) Piperonal.
- 4 (24) Thionylchloride.
- 5 (25) Benzyl cyanide.
- 6 (26) Ergonovine maleate.
- 7 (27) N-methylephedrine.
- 8 (28) N-ethylephedrine.
- 9 (29) N-methylpseudoephedrine.
- 10 (30) N-ethylpseudoephedrine.
- 11 (31) Chloroephedrine.
- 12 (32) Chloropseudoephedrine.
- 13 (33) Hydriodic acid.
- 14 (34) Gamma-butyrolactone, including butyrolactone;
15 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
16 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
17 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
18 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
19 with Chemical Abstract Service number (96-48-0).
- 20 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
21 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
22 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
23 1,4-diol with Chemical Abstract Service number (110-63-4).
- 24 (36) Red phosphorus, including white phosphorus,
25 hypophosphorous acid and its salts, ammonium hypophosphite,
26 calcium hypophosphite, iron hypophosphite, potassium
27 hypophosphite, manganese hypophosphite, magnesium
28 hypophosphite, sodium hypophosphite, and phosphorous acid and
29 its salts.
- 30 (37) Iodine or tincture of iodine.
- 31 (38) Any of the substances listed by the Department of Justice
32 in regulations promulgated pursuant to subdivision (b).
- 33 (b) The Department of Justice may adopt rules and regulations
34 in accordance with Chapter 3.5 (commencing with Section 11340)
35 of Part 1 of Division 3 of Title 2 of the Government Code that add
36 substances to subdivision (a) if the substance is a precursor to a
37 controlled substance and delete substances from subdivision (a).
38 However, no regulation adding or deleting a substance shall have
39 any effect beyond March 1 of the year following the calendar year
40 during which the regulation was adopted.

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

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

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

36 (B) The department may authorize the submission of the
37 notification on a monthly basis with respect to repeated, regular
38 transactions between an exporter and an importer involving a
39 substance specified in subdivision (a), if the department determines
40 that a pattern of regular supply of the substance exists between the

1 exporter and importer and that the importer has established a record
2 of utilization of the substance for lawful purposes.

3 (d) (1) Any manufacturer, wholesaler, retailer, or other person
4 or entity in this state that sells, transfers, or otherwise furnishes a
5 substance specified in subdivision (a) to a person or business entity
6 in this state or any other state shall, not less than 21 days prior to
7 delivery of the substance, submit a report of the transaction, which
8 includes the identification information specified in subdivision
9 (c), to the Department of Justice. The Department of Justice may
10 authorize the submission of the reports on a monthly basis with
11 respect to repeated, regular transactions between the furnisher and
12 the recipient involving the substance or substances if the
13 Department of Justice determines that a pattern of regular supply
14 of the substance or substances exists between the manufacturer,
15 wholesaler, retailer, or other person or entity that sells, transfers,
16 or otherwise furnishes the substance or substances and the recipient
17 of the substance or substances, and the recipient has established a
18 record of utilization of the substance or substances for lawful
19 purposes.

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

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

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

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

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

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

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

6 (6) (A) Any sale, transfer, furnishing, or receipt of any product
7 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine and which is lawfully sold, transferred,
9 or furnished over the counter without a prescription pursuant to
10 the ~~federal~~ *Federal* Food, Drug, and Cosmetic Act (21 U.S.C. Sec.
11 301 et seq.) or regulations adopted thereunder. However, this
12 section shall apply to preparations in solid or liquid dosage form,
13 except pediatric liquid forms, as defined, containing ephedrine,
14 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
15 where the individual transaction involves more than three packages
16 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
17 or phenylpropanolamine.

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

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

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

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

38 (2) Any person specified in subdivision (a) or (d) who has
39 previously been convicted of a violation of paragraph (1) shall,
40 upon a subsequent conviction thereof, be punished by

1 imprisonment pursuant to subdivision (h) of Section 1170 of the
2 Penal Code, or by imprisonment in a county jail not exceeding one
3 year, by a fine not exceeding one hundred thousand dollars
4 (\$100,000), or by both the fine and imprisonment.

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

10 (2) Except as otherwise provided in subparagraph (A) of
11 paragraph (6) of subdivision (e), it is unlawful for any person under
12 18 years of age to possess a substance specified in subdivision (a).

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

29 (4)

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

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

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

38 ~~(1) "Drug store" is any entity described in Code 5912 of the~~
39 ~~Standard Industrial Classification (SIC) Manual published by the~~
40 ~~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, 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 dosages at or below that specified in paragraph (3) of subdivision (g). “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.

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

4 SEC. 2. Section 11100 is added to the Health and Safety Code,
5 to read:

6 11100. (a) Any manufacturer, wholesaler, retailer, or other
7 person or entity in this state that sells, transfers, or otherwise
8 furnishes any of the following substances to any person or entity
9 in this state or any other state shall submit a report to the
10 Department of Justice of all of those transactions:

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

- 1 (31) Chloroephedrine.
- 2 (32) Chloropseudoephedrine.
- 3 (33) Hydriodic acid.
- 4 (34) Gamma-butyrolactone, including butyrolactone;
5 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
6 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
7 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
8 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
9 with Chemical Abstract Service number (96-48-0).
- 10 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
11 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
12 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
13 1,4-diol with Chemical Abstract Service number (110-63-4).
- 14 (36) Red phosphorus, including white phosphorus,
15 hypophosphorous acid and its salts, ammonium hypophosphite,
16 calcium hypophosphite, iron hypophosphite, potassium
17 hypophosphite, manganese hypophosphite, magnesium
18 hypophosphite, sodium hypophosphite, and phosphorous acid and
19 its salts.
- 20 (37) Iodine or tincture of iodine.
- 21 (38) Any of the substances listed by the Department of Justice
22 in regulations promulgated pursuant to subdivision (b).
- 23 (b) The Department of Justice may adopt rules and regulations
24 in accordance with Chapter 3.5 (commencing with Section 11340)
25 of Part 1 of Division 3 of Title 2 of the Government Code that add
26 substances to subdivision (a) if the substance is a precursor to a
27 controlled substance and delete substances from subdivision (a).
28 However, no regulation adding or deleting a substance shall have
29 any effect beyond March 1 of the year following the calendar year
30 during which the regulation was adopted.
- 31 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
32 person or entity in this state, prior to selling, transferring, or
33 otherwise furnishing any substance specified in subdivision (a) to
34 any person or business entity in this state or any other state, shall
35 require (i) a letter of authorization from that person or business
36 entity that includes the currently valid business license number or
37 federal Drug Enforcement Administration (DEA) registration
38 number, the address of the business, and a full description of how
39 the substance is to be used, and (ii) proper identification from the
40 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~~ *Section 814(d)* of Title 21 of the
11 United States Code 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

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, 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 dosages at or below that specified in paragraph (3) of subdivision (g). “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 become operative on January 1, 2018.

SEC. 2.5. 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.

- 1 (8) *Ethyl malonate.*
- 2 (9) *Barbituric acid.*
- 3 (10) *Piperidine.*
- 4 (11) *N-acetylanthranilic acid.*
- 5 (12) *Pyrrolidine.*
- 6 (13) *Phenylacetic acid.*
- 7 (14) *Anthranilic acid.*
- 8 (15) *Morpholine.*
- 9 (16) *Ephedrine.*
- 10 (17) *Pseudoephedrine.*
- 11 (18) *Norpseudoephedrine.*
- 12 (19) *Phenylpropanolamine.*
- 13 (20) *Propionic anhydride.*
- 14 (21) *Isosafrole.*
- 15 (22) *Safrole.*
- 16 (23) *Piperonal.*
- 17 (24) *Thionylchloride.*
- 18 (25) *Benzyl cyanide.*
- 19 (26) *Ergonovine maleate.*
- 20 (27) *N-methylephedrine.*
- 21 (28) *N-ethylephedrine.*
- 22 (29) *N-methylpseudoephedrine.*
- 23 (30) *N-ethylpseudoephedrine.*
- 24 (31) *Chloroephedrine.*
- 25 (32) *Chloropseudoephedrine.*
- 26 (33) *Hydriodic acid.*
- 27 (34) *Gamma-butyrolactone, including butyrolactone;*
28 *butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;*
29 *dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;*
30 *1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;*
31 *3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone*
32 *with Chemical Abstract Service number (96-48-0).*
- 33 (35) *1,4-butanediol, including butanediol; butane-1,4-diol;*
34 *1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;*
35 *1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene*
36 *1,4-diol with Chemical Abstract Service number (110-63-4).*
- 37 (36) *Red phosphorus, including white phosphorus,*
38 *hypophosphorous acid and its salts, ammonium hypophosphite,*
39 *calcium hypophosphite, iron hypophosphite, potassium*
40 *hypophosphite, manganese hypophosphite, magnesium*

1 hypophosphite, sodium hypophosphite, and phosphorous acid and
2 its salts.

3 (37) Iodine or tincture of iodine.

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

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

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

29 (B) For the purposes of this paragraph, "proper identification"
30 for in-state or out-of-state purchasers includes two or more of the
31 following: federal tax identification number; seller's permit
32 identification number; city or county business license number;
33 license issued by the State Department of Public Health;
34 registration number issued by the federal Drug Enforcement
35 Administration; precursor business permit number issued by the
36 Bureau of Narcotic Enforcement of the Department of Justice;
37 driver's license; or other identification issued by a state.

38 (2) (A) Any manufacturer, wholesaler, retailer, or other person
39 or entity in this state that exports a substance specified in
40 subdivision (a) to any person or business entity located in a foreign

1 country shall, on or before the date of exportation, submit to the
2 Department of Justice a notification of that transaction, which
3 notification shall include the name and quantity of the substance
4 to be exported and the name, address, and, if assigned by the
5 foreign country or subdivision thereof, business identification
6 number of the person or business entity located in a foreign country
7 importing the substance.

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

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

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

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

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

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

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

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

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

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

30 (B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or
31 phenylpropanolamine product subsequently removed from
32 exemption pursuant to Section 814 of Title 21 of the United States
33 Code shall similarly no longer be exempt from any state reporting
34 or permitting requirement, unless otherwise reinstated pursuant
35 to Section 814 (d) of Title 21 of the United States Code as an
36 exempt product.

37 (7) The sale, transfer, furnishing, or receipt of any betadine or
38 povidone solution with an iodine content not exceeding 1 percent
39 in containers of eight ounces or less, or any tincture of iodine not

1 exceeding 2 percent in containers of one ounce or less, that is sold
2 over the counter.

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

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

11 (2) Any person specified in subdivision (a) or (d) who has
12 previously been convicted of a violation of paragraph (1) shall,
13 upon a subsequent conviction thereof, be punished by imprisonment
14 pursuant to subdivision (h) of Section 1170 of the Penal Code, or
15 by imprisonment in a county jail not exceeding one year, by a fine
16 not exceeding one hundred thousand dollars (\$100,000), or by
17 both the fine and imprisonment.

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

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

27 (3) Notwithstanding any other law, it is unlawful for any retail
28 distributor to (A) sell in a single transaction more than three
29 packages of a product that he or she knows to contain ephedrine,
30 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
31 or (B) knowingly sell more than nine grams of ephedrine,
32 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
33 other than pediatric liquids as defined. Except as otherwise
34 provided in this section, the three package per transaction
35 limitation or nine gram per transaction limitation imposed by this
36 paragraph shall apply to any product that is lawfully sold,
37 transferred, or furnished over the counter without a prescription
38 pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
39 Sec. 301 et seq.), or regulations adopted thereunder, unless
40 exempted from the requirements of the federal Controlled

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

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

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

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

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

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

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

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

31 (5) "Retail distributor" means a grocery store, general
32 merchandise store, drugstore, or other related entity, the activities
33 of which, as a distributor of ephedrine, pseudoephedrine,
34 norpseudoephedrine, or phenylpropanolamine products, are limited
35 exclusively to the sale of ephedrine, pseudoephedrine,
36 norpseudoephedrine, or phenylpropanolamine products for
37 personal use both in number of sales and volume of sales, either
38 directly to walk-in customers or in face-to-face transactions by
39 direct sales. "Retail distributor" includes an entity that makes a
40 direct sale, but does not include the parent company of that entity

1 *if the company is not involved in direct sales regulated by this*
2 *article.*

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

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

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

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

18 11100.02. (a) Notwithstanding any other law, it is unlawful
19 for any retail distributor to knowingly do the following, except
20 pursuant to a valid prescription from a licensed practitioner with
21 prescriptive authority:

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

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

37 (3) To sell or distribute to any purchaser a nonprescription
38 product containing any amount of ephedrine, pseudoephedrine,
39 norpseudoephedrine, or phenylpropanolamine, except under the
40 following conditions:

1 (A) The purchaser shall produce valid government-issued photo
2 identification.

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

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

6 (ii) The identification number presented.

7 (iii) The agency issuing the identification and the type of
8 identification issued.

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

10 (v) The amount of ephedrine base, pseudoephedrine base,
11 norpseudoephedrine base, or phenylpropanolamine base contained
12 in the material, compound, mixture, or preparation sold.

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

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

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

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

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

30 (D) The name, quantity of packages, and total gram weight of
31 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
32 or phenylpropanolamine base contained in a product or products
33 purchased, received, or otherwise acquired.

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

35 (2) On and after July 1, 2012, the retail distributor shall transmit
36 the information immediately to the National Precursor Log
37 Exchange (NPLEx) administered by the National Association of
38 Drug Diversion Investigators (NADDI) for purposes of determining
39 whether the proposed sale would violate this section and therefore
40 may not proceed, provided that the NPLEx system is available to

1 retailers in the state without a charge for accessing the system. The
2 transaction information shall not be accessed, stored, or used by
3 the retail distributor for any purpose other than to meet the
4 requirements set forth in this section or to comply with the
5 provisions of the federal Combat Methamphetamine Epidemic Act
6 of 2005, or any regulation adopted pursuant to this section or that
7 act. The retail distributor shall not maintain a separate copy of the
8 transaction information except as required by the federal Combat
9 Methamphetamine Epidemic Act of 2005.

10 (3) (A) A retail distributor shall provide notice electronically,
11 in writing, or by signage to purchasers that the information
12 collected pursuant to the federal Combat Methamphetamine
13 Epidemic Act of 2005 and this section shall be provided to law
14 enforcement for purposes of determining the legality of a proposed
15 sale.

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

20 (4) This subdivision shall not be construed to require a retail
21 distributor to maintain state-required records relating to the sale
22 of products containing ephedrine, pseudoephedrine,
23 norpseudoephedrine, or phenylpropanolamine in a separate location
24 or log from records required by federal law to be kept with respect
25 to those products.

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

30 (6) If a retail distributor experiences mechanical or electronic
31 failure of the system and is unable to comply with the recording
32 requirements of this subdivision, the retail distributor shall maintain
33 the required records in a written log or an alternative electronic
34 recordkeeping mechanism until the retail distributor is able to
35 comply with the recording requirements of this subdivision.

36 (d) (1) Provided that the department executes a memorandum
37 of understanding (MOU) with NADDI governing access, pursuant
38 to this subdivision, NADDI shall forward California transaction
39 records in NPLeX to the Department of Justice weekly and provide
40 real-time access to NPLeX information through the NPLeX online

portal to law enforcement in the state as authorized by the department.

(2) Access to the system shall be available at no charge to the department and law enforcement in this state as authorized pursuant to paragraph (1).

~~(2)~~

(3) The system shall allow retail distributors of products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine to enter into the database the information specified in subdivision (c) regarding the proposed sale of those products.

~~(3)~~

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

(5) Neither the department nor any state agency shall bear any cost for the development, installation, or maintenance of the system.

~~(4)~~

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

~~(5)~~

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

1 ~~(6)~~

2 (8) A retail distributor's use of the system shall be subject to
3 Section 56.101 of the Civil Code. A retail distributor shall not
4 maintain any records collected under this system for longer than
5 two years, or as otherwise required by the federal Combat
6 Methamphetamine Epidemic Act of 2005.

7 ~~(7)~~

8 (9) 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)~~

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

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

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

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

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

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

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

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

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

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

(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, 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. Sections 1.5 and 2.5 of this bill incorporate amendments to Section 11100 of the Health and Safety Code proposed by both this bill and Assembly Bill 109, which has been chaptered but is not operative. Sections 1.5 and 2.5 shall become operative only if (1) this bill is enacted and becomes effective on or before January 1, 2012, (2) this bill amends Section 11100 of the Health and Safety Code, and (3) Assembly Bill 109 becomes operative, in which case Section 11100 of the Health and Safety Code, as amended by Sections 1 and 2 of this bill, shall remain operative only until the operative date of Assembly Bill 109, at which time Sections 1.5 and 2.5 of this bill shall become operative.

~~SEC. 4.~~

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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