AMENDED IN SENATE JANUARY 27, 2014

SENATE BILL No. 506

Introduced by Senator Hill

February 21, 2013

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

SB 506, 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 a 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 a 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 the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators (NADDI) and the vendor of the system governing access and oversight of the California transaction records regarding the transaction records, as specified, including requiring that NADDI reimburse the department for costs incurred in executing the memorandum of understanding, including the competitive bidding process, and for costs incurred in performing oversight and other duties. The bill would also* require, *if the memorandum of understanding is entered into,* retail distributors to transmit, on and after July 1, ~~2014,~~ *2015,* sale information to the ~~National Precursor Log Exchange (NPLEx)~~ *system* 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~~ *prohibit use of* 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~~

(2) The bill's provisions would *become operative as of February 1, 2015, but only if the NADDI voluntarily agrees, on or before January 15, 2015, to reimburse the Department of Justice for costs incurred in the execution of the memorandum of understanding, including the competitive bidding process, and for costs incurred in performing oversight and other duties, as specified. The bill would require the Department of Justice to post on its Internet Web site on or before*

January 19, 2015, whether or not NADDI has agreed to reimburse the department for these costs. The bill's provisions would remain in effect only until January 1, 2019. By creating a new crime, this bill would impose a state-mandated local program.

~~(2)~~

(3) 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:

SECTION 1. Section 11100 of the Health and Safety Code 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.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionyl chloride.
(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~~ *Abstracts* Service number ~~(96-48-0)~~ *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~~ *Abstracts* Service number ~~(110-63-4)~~ *110-63-4*.
(36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.
(37) Iodine or tincture of iodine.
(38) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).
(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a

controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

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

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

(2) (A) A manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to a 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. The 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) A manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A 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, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, 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) Thionyl chloride.
(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~~ *Abstracts* Service number ~~(96-48-0)~~ *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~~ *Abstracts* Service number ~~(110-63-4)~~ *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) A manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing a substance specified in subdivision (a) to a person or business entity in this state or any other state, shall require (i) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, “proper identification” for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller’s permit identification number; city or county business license number; license issued by the 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) A manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to a 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. The 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) A manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

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

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

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

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

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

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

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

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

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

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

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

(f) (1) A person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information

shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

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

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

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

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

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

(B) A person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year,

by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

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

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

(2) "General merchandise store" is an 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 an 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.

(j) This section shall become operative on January 1, 2019.

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

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

(1) To sell or distribute to the same purchaser within a 30-day period more than 9 grams, or within a day more than 3.6 grams, of ephedrine base, pseudoephedrine base, norpseudoephedrine base, or phenylpropanolamine base contained in a product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

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

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

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

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

(i) The date and time of the transaction.

(ii) The identification number presented.

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

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

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

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

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

(A) The date and time of the transaction.

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

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

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

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

(2) *(A)* On and after July 1, ~~2014,~~ *2015,* the retail distributor shall transmit the information immediately to ~~the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI)~~ *a vendor to collect, administer, and provide access to the transaction data* for purposes of determining whether the proposed sale would violate this section and therefore may not proceed, provided that the ~~NPLEx~~ system is available to retailers in the state without a charge for accessing the system. The transaction information shall not be accessed, stored, or used by the retail distributor or law enforcement for any purpose other than to meet the requirements set forth in this section or to comply with the provisions of the

federal Combat Methamphetamine Epidemic Act of 2005, or any regulation adopted pursuant to this section or that act. The retail distributor shall not maintain a separate copy of the transaction information and shall not have direct access to individual information or sales records entered into the ~~NPLEx~~ system, except as required by the federal Combat Methamphetamine Epidemic Act of 2005.

(B) Subparagraph (A) shall only become operative if the department executes a memorandum of understanding (MOU) with NADDI and the vendor of the system governing access and oversight of the California transaction records pursuant to paragraph (1) of subdivision (d). Prior to executing the MOU, the Department of Justice shall carry out a competitive bidding process for a vendor to collect, administer, and provide access to the transaction data transmitted by retail distributors.

(3) (A) A retail distributor shall provide notice electronically, in writing, or by signage to purchasers at the time of purchase that the information collected pursuant to the federal Combat Methamphetamine Epidemic Act of 2005 and this section shall be entered into a single database as specified in paragraph (2) and provided to law enforcement for purposes of determining the legality of a proposed sale.

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

(C) Access by law enforcement to the data contained in the system from a location other than the retailer shall be limited to the records of an individual whose attempted purchase has been denied by the system.

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

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

(6) If a retail distributor experiences mechanical or electronic failure of the system and is unable to comply with the recording requirements of this subdivision, the retail distributor shall maintain the required records in a written log or an alternative electronic recordkeeping mechanism until the retail distributor is able to comply with the recording requirements of this subdivision. Written logs shall be maintained only for the purpose of compliance with this subdivision.

(d) (1) ~~Provided that the department executes a memorandum of understanding (MOU) with NADDI governing access, pursuant to this subdivision, NADDI shall forward California transaction records in NPLEx to the Department of Justice weekly and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the state as authorized by the department. The MOU shall constitute an enforceable contract.~~ *The MOU described in paragraph (2) of subdivision (c) between the department, NADDI, and the vendor of the system shall require NADDI to reimburse the department for costs incurred in executing the MOU, including the competitive bidding process, and for costs incurred in performing oversight and other duties required by this section and the MOU.*

(2) The MOU shall require NADDI to forward California transaction records in the system to the Department of Justice weekly and provide real-time access to the information through the vendor's online portal to law enforcement in the state as authorized by the department.

(3) The MOU shall constitute an enforceable contract.

~~(2)~~

(4) 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).

~~(3)~~

(5) 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.

~~(4)~~

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

~~(5)~~

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

~~(6)~~

(8) 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 a 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.

~~(7)~~

(9) 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.

~~(8)~~

(10) The use of the system by a retail distributor or vendor of the ~~NPLEx~~ system shall be subject to Section 56.101 of the Civil Code*, including the purchaser's right of access or to receive a copy of his or her purchaser records*. A retail distributor or a vendor of the ~~NPLEx~~ system holding the ~~NPLEx~~ data shall not maintain any records collected under this system for longer than two years, or as otherwise required by the federal Combat Methamphetamine Epidemic Act of 2005 and shall be destroyed pursuant to Section 1798.81 of the Civil Code.

~~(9)~~

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

~~(10)~~

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

~~(11)~~

(13) Disputes relating to compliance with this section arising against a vendor of the ~~NPLEx~~ system shall be subject to a court of competent jurisdiction in California and shall be governed by California law.

(e) The State Board of Equalization shall notify all retailers about the requirement to submit transactions to ~~NPLEx~~ *the system* no later than April 1, 2014.

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

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

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

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

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

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

(3) "General merchandise store" is an 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.

(4) "Grocery store" is an entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the 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, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

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

SEC. 5. (a) This act shall become operative on February 1, 2015.

(b) This act shall become operative only if the National Association of Drug Diversion Investigators (NADDI) voluntarily agrees, on or before January 15, 2015, to reimburse the department for costs incurred in the execution of the memorandum of understanding, including the competitive bidding process, and for

costs incurred in performing oversight and other duties as described in Section 11100.02 of the Health and Safety Code, as amended by this act. The Department of Justice shall post on its Internet Web site on or before January 19, 2015, whether or not NADDI has agreed to reimburse the department for these costs.

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