

AMENDED IN SENATE JUNE 29, 2000

AMENDED IN SENATE JUNE 15, 2000

AMENDED IN ASSEMBLY MAY 3, 2000

AMENDED IN ASSEMBLY APRIL 5, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2018

Introduced by Assembly Members Thomson, Runner, and Migden

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

(Coauthors: Senators Bowen and Johannessen)

February 18, 2000

~~An act to amend Section 11165 of, to amend and repeal Sections 11159.2, 11161, 11162, 11162.5, 11163, 11168, and 11169 of, and to amend, repeal, and add Sections 11158, 11164, 11167, and 11167.5—An act to amend Sections 11161, 11164, 11165, and 11167 of, and to repeal Section 11163 of, the Health and Safety Code, relating to controlled substances.~~

LEGISLATIVE COUNSEL'S DIGEST

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

(1) Existing law provides that no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense such a prescription unless it complies with specified requirements, one of which is that prescriptions for Schedule

II controlled substances shall be prepared in triplicate. The Department of Justice is required to issue these triplicate prescriptions *in serially numbered groups of not more than 100 forms* to any practitioner authorized to write a prescription for Schedule II controlled substances. Existing law also ~~imposes specified printing and distribution requirements on prescription blanks, provides that it is a crime to counterfeit or knowingly possess official prescription blanks, limits the number of prescription blank groups issued to an individual prescriber by the Department of Justice, requires the retention of a prescriber's prescription book for 3 years, and provides that, subject to a specified alternate procedure and related requirements, a prescription for a Schedule II drug for use by a terminally ill patient is exempt from specified reporting requirements.~~

This bill would, as of January 1, 2003, ~~eliminate the triplicate prescription requirement for Schedule II controlled substances, make conforming changes to related provisions, and as of that date repeal specified printing and~~ *revise the distribution requirements applicable to prescription blanks for Schedule II and other drugs, provisions making it a crime to counterfeit or knowingly possess prescription blanks, the 3-year recordkeeping requirement described above, and the alternate Schedule II prescribing procedure applicable to terminally ill patients and would revise the information required in a prescription for a Schedule II controlled substance. The bill would authorize a pharmacist to fill a prescription for a controlled substance classified in Schedule II containing an error or errors, provided the pharmacist notifies the prescriber of the error or errors and the prescriber approves any correction. The prescriber would be required to fax or mail a corrected prescription to the pharmacist within 7 days of the prescription being dispensed.*

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



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

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

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

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

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

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

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

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

1 SECTION 1. ~~Section 11158 of the Health and Safety~~
2



1 SECTION 1. Section 11161 of the Health and Safety
2 Code is amended to read:

3 11161. (a) Prescription blanks shall be issued by the
4 Department of Justice in serially numbered groups of not
5 more than 100 forms each in triplicate *unless a*
6 *practitioner orally, electronically, or in writing requests*
7 *a larger amount*, and shall be furnished to any
8 practitioner authorized to write a prescription for
9 controlled substances classified in Schedule II. The
10 Department of Justice may charge a fee for the
11 prescription blanks sufficient to reimburse the
12 department for the actual costs associated with the
13 preparation, processing, and filing of any forms issued
14 pursuant to this section. The prescription blanks shall not
15 be transferable. ~~The Department of Justice shall not,~~
16 ~~during any 30-day period, issue more than 100 triplicate~~
17 ~~prescription blanks to any authorized practitioner, until~~
18 ~~written justification has been received and approved by~~
19 ~~the Department of Justice.~~ Any person possessing a
20 triplicate prescription blank otherwise than as provided
21 in this section is guilty of a misdemeanor.

22 (b) When a practitioner is named in a warrant of arrest
23 or is charged in an accusatory pleading with a felony
24 violation of Section 11153, 11154, 11156, 11157, 11170,
25 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378,
26 11378.5, 11379, 11379.5, or 11379.6, the court in which the
27 accusatory pleading is filed or the magistrate who issued
28 the warrant of arrest shall, upon the motion of a law
29 enforcement agency which is supported by reasonable
30 cause, issue an order which requires the practitioner to
31 surrender to the clerk of the court all triplicate
32 prescription blanks in the practitioner's possession at a
33 time set in the order and shall direct the Department of
34 Justice to withhold prescription blanks from the
35 practitioner. The law enforcement agency obtaining the
36 order shall notify the Department of Justice of this order.
37 Except as provided in subdivisions (c) and (f) of this
38 section, the order shall remain in effect until further
39 order of the court. Any practitioner possessing



1 prescription blanks in violation of the order is guilty of a
2 misdemeanor.

3 (c) The order provided by subdivision (b) shall be
4 vacated if the court or magistrate finds that the
5 underlying violation or violations are not supported by
6 reasonable cause at a hearing held within two court days
7 after the practitioner files and personally serves upon the
8 prosecuting attorney and the law enforcement agency
9 that obtained the order, a notice of motion to vacate the
10 order with any affidavits on which the practitioner relies.
11 At the hearing, the burden of proof, by a preponderance
12 of the evidence, is on the prosecution. Evidence
13 presented at the hearing shall be limited to the warrant
14 of arrest with supporting affidavits, the motion to require
15 the defendant to surrender all triplicate prescription
16 blanks with supporting affidavits, the sworn complaint
17 together with any documents or reports incorporated by
18 reference thereto which, if based on information and
19 belief, state the basis for the information, or any other
20 documents of similar reliability as well as affidavits and
21 counter affidavits submitted by the prosecution and
22 defense. Granting of the motion to vacate the order is no
23 bar to prosecution of the alleged violation or violations.

24 (d) The defendant may elect to challenge the order
25 issued under subdivision (b) at the preliminary
26 examination. At that hearing, the evidence shall be
27 limited to that set forth in subdivision (c) and any other
28 evidence otherwise admissible at the preliminary
29 examination.

30 (e) If the practitioner has not moved to vacate the
31 order issued under subdivision (b) by the time of the
32 preliminary examination and he or she is held to answer
33 on the underlying violation or violations, the practitioner
34 shall be precluded from afterwards moving to vacate the
35 order. If the defendant is not held to answer on the
36 underlying charge or charges at the conclusion of the
37 preliminary examination, the order issued under
38 subdivision (b) shall be vacated.

39 (f) Notwithstanding subdivision (e), any practitioner
40 who is diverted pursuant to Chapter 2.5 (commencing



1 with Section 1000) of Title 7 of Part 2 of the Penal Code
2 may file a motion to vacate the order issued under
3 subdivision (b).

4 *SEC. 2. Section 11163 of the Health and Safety Code*
5 *is repealed.*

6 ~~11163. Not more than one such prescription group~~
7 ~~shall in any case be issued or furnished by the~~
8 ~~Department of Justice to the same prescriber at one time.~~

9 *SEC. 3. Section 11164 of the Health and Safety Code*
10 *is amended to read:*

11 11164. Except as provided in Section 11167, no person
12 shall prescribe a controlled substance, nor shall any
13 person fill, compound, or dispense such a prescription
14 unless it complies with the requirements of this section.

15 (a) ~~Each~~ *The signature on each* prescription for a
16 controlled substance classified in Schedule II shall be
17 wholly written in ink or indelible pencil in the
18 handwriting of the prescriber upon the official
19 prescription form issued by the Department of Justice.
20 Each prescription shall be prepared in triplicate, signed,
21 ~~and dated~~ by the prescriber, and shall contain, *either*
22 *typewritten or handwritten by the physician or his or her*
23 *employee, the date, name, and address of the person for*
24 *whom the controlled substance is prescribed, the name,*
25 *quantity, and strength of the controlled substance*
26 *prescribed, directions for use, and the address, category*
27 *of professional licensure, and the federal controlled*
28 *substance registration number of the prescriber. The*
29 *original and duplicate of the prescription shall be*
30 *delivered to the pharmacist filling the prescription. The*
31 *duplicate shall be retained by the pharmacist and the*
32 *original, properly endorsed by the pharmacist with the*
33 *name and address of the pharmacy, the pharmacy's state*
34 *license number, the date the prescription was filled and*
35 *the signature of the pharmacist, shall be transmitted to*
36 *the Department of Justice at the end of the month in*
37 *which the prescription was filled. Upon receipt of an*
38 *incompletely prepared official prescription form of the*
39 *Department of Justice, the pharmacist may enter on the*
40 *face of the prescription the address of the patient. A*



1 *pharmacist may fill a prescription for a controlled*
2 *substance classified in Schedule II containing an error or*
3 *errors, if the pharmacist notifies the prescriber of the*
4 *error or errors and the prescriber approves any*
5 *correction. The prescriber shall fax or mail a corrected*
6 *prescription to the pharmacist within seven days of the*
7 *prescription being dispensed.*

8 (b) Each prescription for a controlled substance
9 classified in Schedule III, IV, or V, except as authorized
10 by subdivision (c), shall be subject to the following
11 requirements:

12 (1) The prescription shall be signed and dated by the
13 prescriber and shall contain the name of the person for
14 whom the controlled substance is prescribed, the name
15 and quantity of the controlled substance prescribed, and
16 directions for use. With respect to prescriptions for
17 controlled substances classified in Schedules III and IV,
18 the signature, date, and information required by this
19 paragraph shall be wholly written in ink or indelible
20 pencil in the handwriting of the prescriber.

21 (2) In addition, the prescription shall contain the
22 name, address, telephone number, category of
23 professional licensure, and federal controlled substance
24 registration number of the prescriber. The information
25 required by this paragraph shall be either preprinted
26 upon the prescription blank, typewritten, rubber
27 stamped, or printed by hand. Notwithstanding any
28 provision in this section, the prescriber's address,
29 telephone number, category of professional licensure, or
30 federal controlled substances registration number need
31 not appear on the prescription if that information is
32 readily retrievable in the pharmacy.

33 (3) The prescription shall also contain the address of
34 the person for whom the controlled substance is
35 prescribed. If the prescriber does not specify this address
36 on the prescription, the pharmacist filling the
37 prescription or an employee acting under the direction
38 of the pharmacist shall write or type the address on the
39 prescription or maintain this information in a readily
40 retrievable form in the pharmacy.



1 (c) Any controlled substance classified in Schedule III,
2 IV, or V may be dispensed upon an oral or electronically
3 transmitted prescription, which shall be reduced to
4 writing by the pharmacist filling the prescription or by
5 any other person expressly authorized by provisions of
6 the Business and Professions Code. The date of issue of the
7 prescription and all the information required for a
8 written prescription by subdivision (b) shall be included
9 in the written record of the prescription. The pharmacist
10 need not reduce to writing the address, telephone
11 number, license classification, or federal registry number
12 of the prescriber or the address of the patient if that
13 information is readily retrievable in the pharmacy.
14 Pursuant to authorization of the prescriber, any
15 employee of the prescriber on behalf of the prescriber
16 may orally or electronically transmit a prescription for a
17 controlled substance classified in Schedule III, IV, or V, if
18 in these cases the written record of the prescription
19 required by this subdivision specifies the name of the
20 employee of the prescriber transmitting the prescription.

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

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

27 (f) In addition to the prescriber's record required by
28 Section 11190, any practitioner dispensing a controlled
29 substance classified in Schedule II in accordance with
30 subdivision (b) of Section 11158 shall prepare a written
31 record thereof on the official forms issued by the
32 Department of Justice, pursuant to Section 11161, and
33 shall transmit the original to the Department of Justice in
34 accordance with any rules that the department may
35 adopt for completion and transmittal of the forms.

36 *SEC. 4. Section 11165 of the Health and Safety Code*
37 *is amended to read:*

38 11165. (a) To assist law enforcement and regulatory
39 agencies in their efforts to control the diversion and
40 resultant abuse of Schedule II controlled substances, and



1 for statistical analysis, education, and research, the
2 Department of Justice shall, contingent upon the
3 availability of adequate funds, establish the Controlled
4 Substance Utilization Review and Evaluation System
5 (CURES) for the electronic monitoring of the
6 prescribing and dispensing of Schedule II controlled
7 substances by all practitioners authorized to prescribe or
8 dispense these controlled substances. CURES shall be
9 implemented as a pilot project, commencing on July 1,
10 1997, to be administered concurrently with the existing
11 triplicate prescription process, to examine the
12 comparative efficiencies between the two systems.

13 (b) The CURES pilot project shall operate under
14 existing provisions of law to safeguard the privacy and
15 confidentiality of patients. Data obtained from CURES
16 shall only be provided to appropriate state, local, and
17 federal persons or public agencies for disciplinary, civil,
18 or criminal purposes and to other agencies or entities, as
19 determined by the Department of Justice, for the
20 purpose of educating practitioners and others in lieu of
21 disciplinary, civil, or criminal actions. Data may be
22 provided to public or private entities, as approved by the
23 Department of Justice, for educational, peer review,
24 statistical, or research purposes, provided that patient
25 information, including any information that may identify
26 the patient, is not compromised. Further, data disclosed
27 to any individual or agency as described in this
28 subdivision, shall not be disclosed, sold, or transferred to
29 any third party.

30 (c) The Department of Justice, in consultation with
31 the Board of Pharmacy, shall submit a report to the
32 Legislature by January 1, 1999, with annual updates also
33 due January 1, 2000, 2001, and 2002, on the CURES pilot
34 project. Specifically, these reports shall assess the ability
35 of CURES to provide complete, accurate, and timely data
36 on Schedule II controlled substances prescribed and
37 dispensed in California, the effectiveness of this
38 information in investigating and prosecuting individuals
39 suspected of diversion activities, and the feasibility of
40 replacing the current triple-copy prescription form with



1 a single-copy serialized prescription form to reduce
2 existing administrative burdens. Further, the report shall
3 make recommendations regarding the replacement of
4 the existing triplicate prescription process with CURES,
5 and funding alternatives for ongoing system support.

6 ~~(d) The sum of one million fifty thousand dollars~~
7 ~~(\$1,050,000) is hereby appropriated from the Pharmacy~~
8 ~~Board Contingent Fund to the Board of Pharmacy for the~~
9 ~~purpose of entering into an interagency agreement with~~
10 ~~the Department of Justice for the implementation,~~
11 ~~operation, and evaluation of CURES.~~

12 ~~(e) This section shall become inoperative on July 1,~~
13 ~~2003, and, as of January 1, 2004, is repealed, unless a later~~
14 ~~enacted statute, that becomes operative on or before~~
15 ~~January 1, 2004, deletes or extends the dates on which it~~
16 ~~becomes inoperative and is repealed.~~

17 *(d) This section shall become inoperative on July 1,*
18 *2003, and as of January 1, 2004, is repealed, unless the*
19 *Attorney General determines, and provides timely*
20 *written notification to the appropriate policy committees*
21 *of the Legislature of that determination, that the CURES*
22 *program should be continued on and after July 1, 2003, on*
23 *the basis that the CURES program provides more timely*
24 *data.*

25 *(e) If this section remains in effect on and after July 1,*
26 *2003, the requirement that a prescription for a Schedule*
27 *II controlled substance shall be written on a triplicate*
28 *prescription, as set forth in subdivision (a) of Section*
29 *11164, shall terminate on July 1, 2003, and a prescription*
30 *for a Schedule II controlled substance shall instead meet*
31 *the requirements of subdivision (b) of Section 11164.*

32 *SEC. 5. Section 11167 of the Health and Safety Code*
33 *is amended to read:*

34 *11167. Notwithstanding subdivision (a) of Section*
35 *11164, in an emergency where failure to issue a*
36 *prescription may result in loss of life or intense suffering*
37 *or in an emergency situation as defined in Section 290.10*
38 *of Title 21 of the Code of Federal Regulations, an order*
39 *for a Schedule II controlled substance may be dispensed*



1 on an oral, written, or electronic data transmission order,
2 subject to all of the following requirements:

3 (a) The order contains all information required by
4 subdivision (a) of Section 11164.

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

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

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

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

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35 **All matter omitted in this version of the**
36 **bill appears in the bill as amended in the**
37 **Senate, June 15, 2000 (JR 11)**
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