

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 283

Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Maze)
(Coauthors: Senators Alquist and Margett)

February 9, 2005

An act to add Section 11100.01 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 283, as amended, Koretz. Ephedrine and pseudoephedrine: retail sale.

(1) Under existing law, a retailer who makes an over-the-counter retail sale of ephedrine or pseudoephedrine is generally subject to a 3 package per transaction limitation or 9 gram per transaction limitation. Any violation of this requirement is a crime, punishable as specified.

This bill would provide that the dispensing, sale, or distribution at retail of any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or any derivative of ephedrine or pseudoephedrine shall be subject to specified additional requirements. The retailer would be required to store and display the product in a locked cabinet or as specified and the transaction would be required to be made by a retailer or employee of a retailer who meets specified requirements. A violation of any of

these provisions would be a misdemeanor, punishable as specified, except that (1) a retail clerk who fails to comply with these provisions would not be subject to any civil, criminal, or other penalty, unless the clerk is a willful participant in an ongoing criminal conspiracy to violate these provisions; and (2) a retailer whose employee sells pseudoephedrine or ephedrine in violation of these provisions would not be ~~liable~~ *guilty of a crime or subject to a civil penalty under the bill's provisions*, if the retailer complies with the storage and display requirements and can document that an employee training program was conducted to train employees on compliance with these provisions. *The bill would provide, however, that its provisions shall not alter or affect any cause of action or remedy otherwise available to a consumer under the law.* By creating new crimes, this bill would impose a state-mandated local program upon local governments.

(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 11100.01 is added to the Health and
2 Safety Code, to read:
3 11100.01. (a) In addition to any requirement specified in
4 Section 11100, the dispensing, sale, or distribution at retail of any
5 compound, mixture, preparation, or product that contains any
6 detectable quantity of ephedrine, pseudoephedrine, or any
7 derivative of ephedrine or pseudoephedrine, or any detectable
8 quantity of any salt, optical isomer, or salt of an optical isomer of
9 ephedrine, pseudoephedrine, or any derivative of ephedrine or
10 pseudoephedrine, shall be subject to the following requirements:
11 (1) Any product specified in subdivision (a) shall be stored or
12 displayed by a retailer in a locked cabinet or in such a manner
13 that the product is accessible to the public only with the
14 assistance of the retailer or employee of the retailer. The retailer

1 or employee of the retailer shall at all times act to prevent the
2 theft or diversion of the product.

3 (2) The dispensing, sale, or distribution at retail of any
4 product specified in subdivision (a) shall be made only by a
5 retailer or employee of a retailer who is trained in the legal
6 requirements set forth in this section and who shall at all times
7 act to prevent the theft or diversion of the product.

8 (b) This section shall not apply to any product specified in
9 subdivision (a) in liquid, liquid capsule, or dissolvable strip form
10 in which ephedrine, pseudoephedrine, or any derivative of
11 ephedrine or pseudoephedrine is the active ingredient.

12 (c) (1) The Department of Justice may adopt rules and
13 regulations in accordance with Chapter 3.5 (commencing with
14 Section 11340) of Part 1 of Division 3 of Title 2 of the
15 Government Code that exempt a substance from the application
16 of subdivision (a) if the department finds that the substance is not
17 used in the unlawful manufacture of methamphetamine or any
18 other controlled substance.

19 (2) The Department of Justice shall, upon satisfactory
20 application by the manufacturer of a drug product to the
21 department, exempt any product the department determines to
22 have been formulated in such a way as to effectively prevent the
23 conversion of any active ingredient in the product into
24 methamphetamine or any other controlled substance.

25 (d) Except as provided in subdivision (e), any person who
26 violates this section shall be punished as follows:

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

28 (2) Any person who has previously been convicted of a
29 violation of this section or Section 11100 shall, upon a
30 subsequent conviction thereof, be punished by imprisonment in a
31 county jail not exceeding one year, by a fine not exceeding ten
32 thousand dollars (\$10,000), or by both the fine and
33 imprisonment.

34 (e) Notwithstanding subdivision (d), liability for a violation of
35 this section shall not be imposed in the following cases:

36 (1) A retail clerk who fails to comply with the provisions of
37 subdivision (a) shall not be guilty of a crime pursuant to
38 subdivision (d), shall not be subject to any civil penalty, and shall
39 not be subject to any disciplinary action

1 or discharge by his or her employer, except if the retail clerk is
2 a willful participant in an ongoing criminal conspiracy to violate
3 this section.

4 (2) A retailer whose employee sells pseudoephedrine or
5 ephedrine in violation of this section shall not be ~~liable~~ *guilty of*
6 *a crime pursuant to subdivision (d) and shall not be subject to*
7 *any civil penalty under this subdivision*, if the retailer complies
8 with paragraph (1) of subdivision (a) and can document that an
9 employee training program was conducted to train employees on
10 compliance with this section.

11 (3) *Nothing in this subdivision shall alter or affect any cause*
12 *of action or remedy otherwise available to a consumer under the*
13 *law.*

14 (f) It is the intent of the Legislature that this section and
15 Section 11100 shall preempt all local ordinances or regulations
16 governing the sale by a retail distributor of over-the-counter
17 products containing pseudoephedrine.

18 SEC. 2. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.

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