

ASSEMBLY BILL

No. 2548

Introduced by Assembly Member Block

February 19, 2010

An act to amend Sections 11165 and 11165.1 of, and to add Sections 11165.2 and 11165.3 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2548, as introduced, Block. CURES: Prescription Drug Monitoring Program.

Existing law, the Uniform Controlled Substances Act, provides for the electronic monitoring and reporting of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances pursuant to the Controlled Substance Utilization Review and Evaluation System (CURES) program. The act further provides that in order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual. A violation of any of these provisions is a misdemeanor, punishable as specified.

This bill would establish the Prescription Drug Monitoring Program (PDMP) in state government under the Department of Justice to monitor any practitioner or pharmacist (PDMP subscriber) who has obtained approval, as specified, to access, using the Internet, the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in CURES, as well as the number, amount,

and type of controlled substances being dispensed to an individual under his or her care, in order to control the diversion and resultant abuse of, and to ensure the safe and lawful dispensing of, Schedule II, Schedule III, and Schedule IV controlled substances. This bill would provide that the Department of Justice may establish, by regulation, a system for the issuance to a PDMP subscriber of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the department, if the subscriber is in violation of any provision of, or any regulation adopted by the department pursuant to, the Uniform Controlled Substances Act. This bill would further provide that the theft or loss of prescription information or prescription forms shall be reported, as specified, no later than 3 days after the discovery of the theft or loss. By creating a new crime, this bill would impose a state-mandated local program.

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 11165 of the Health and Safety Code is
 2 amended to read:
 3 11165. (a) To assist law enforcement and regulatory agencies
 4 in their efforts to control the diversion and resultant abuse of
 5 Schedule II, Schedule III, and Schedule IV controlled substances,
 6 and for statistical analysis, education, and research, the Department
 7 of Justice shall, contingent upon the availability of adequate funds
 8 from the Contingent Fund of the Medical Board of California, the
 9 Pharmacy Board Contingent Fund, the State Dentistry Fund, the
 10 Board of Registered Nursing Fund, and the Osteopathic Medical
 11 Board of California Contingent Fund, maintain the Controlled
 12 Substance Utilization Review and Evaluation System (CURES)
 13 for the electronic monitoring *and Internet accessing* of the
 14 prescribing and dispensing of Schedule II, Schedule III, and
 15 Schedule IV controlled substances by all practitioners authorized
 16 to prescribe or dispense these controlled substances.

1 (b) The reporting of Schedule III and Schedule IV controlled
2 substance prescriptions to CURES shall be contingent upon the
3 availability of adequate funds from the Department of Justice. The
4 Department of Justice may seek and use grant funds to pay the
5 costs incurred from the reporting of controlled substance
6 prescriptions to CURES. Funds shall not be appropriated from the
7 Contingent Fund of the Medical Board of California, the Pharmacy
8 Board Contingent Fund, the State Dentistry Fund, the Board of
9 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the
10 Osteopathic Medical Board of California Contingent Fund to pay
11 the costs of reporting Schedule III and Schedule IV controlled
12 substance prescriptions to CURES.

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

27 (d) For each prescription for a Schedule II, Schedule III, or
28 Schedule IV controlled substance, the dispensing pharmacy or
29 clinic shall provide the following information to the Department
30 of Justice on a weekly basis and in a format specified by the
31 Department of Justice:

32 (1) Full name, address, and the telephone number of the ultimate
33 user or research subject, or contact information as determined by
34 the Secretary of the United States Department of Health and Human
35 Services, and the gender, and date of birth of the ultimate user.

36 (2) The prescriber's category of licensure and license number;
37 federal controlled substance registration number; and the state
38 medical license number of any prescriber using the federal
39 controlled substance registration number of a government-exempt
40 facility.

- 1 (3) Pharmacy prescription number, license number, and federal
- 2 controlled substance registration number.
- 3 (4) NDC (National Drug Code) number of the controlled
- 4 substance dispensed.
- 5 (5) Quantity of the controlled substance dispensed.
- 6 (6) ICD-9 (diagnosis code), if available.
- 7 (7) Number of refills ordered.
- 8 (8) Whether the drug was dispensed as a refill of a prescription
- 9 or as a first-time request.
- 10 (9) Date of origin of the prescription.
- 11 (10) Date of dispensing of the prescription.

12 (e) This section shall become operative on January 1, 2005.

13 SEC. 2. Section 11165.1 of the Health and Safety Code is

14 amended to read:

15 11165.1. (a) (1) A licensed health care practitioner eligible

16 to prescribe Schedule II, Schedule III, or Schedule IV controlled

17 substances or a pharmacist may ~~make a written request for~~

18 *manually or electronically submit to the Department of Justice a*

19 *notarized application developed by the department to obtain*

20 *approval to access, using the Internet, the electronic history of*

21 *controlled substances dispensed to an individual under his or her*

22 *care based on data contained in CURES, and the Department of*

23 *Justice may, upon approval of the application, release to that*

24 *practitioner or pharmacist, the electronic history of controlled*

25 *substances dispensed to an individual under his or her care based*

26 *on data contained in CURES.*

27 (2) Any request for, or release of, a controlled substance history

28 pursuant to this section shall be made in accordance with guidelines

29 developed by the Department of Justice.

30 (3) *An application by a practitioner or pharmacist may be*

31 *denied, or access authorized pursuant to this section for a*

32 *practitioner or pharmacist may be suspended, for cause, including,*

33 *but not limited to, the following:*

- 34 (A) *Materially falsifying an application.*
- 35 (B) *Failure to maintain effective controls for access to the*
- 36 *patient activity report.*
- 37 (C) *The suspension or revocation of a Drug Enforcement Agency*
- 38 *registration.*
- 39 (D) *An arrest or conviction for any controlled substance offense*
- 40 *or violation of this section.*

1 (E) Accessing information pursuant to this section for any
2 reason not related to the care of a patient.

3 (4) Any practitioner or pharmacist authorized pursuant to this
4 section to access a patient's history of dispensed controlled
5 substances shall notify the department within 10 days of any change
6 of pertinent information regarding the practitioner or pharmacist.

7 ~~(b) In order to prevent the inappropriate, improper, or illegal
8 use of Schedule II, Schedule III, or Schedule IV controlled
9 substances, the Department of Justice may initiate the referral of
10 the history of controlled substances dispensed to an individual
11 based on data contained in CURES to licensed health care
12 practitioners, pharmacists, or both, providing care or services to
13 the individual.~~

14 (e)

15 (b) The history of controlled substances dispensed to an
16 individual based on data contained in CURES that is received by
17 a practitioner or pharmacist from the Department of Justice
18 pursuant to this section shall be considered medical information
19 subject to the provisions of the Confidentiality of Medical
20 Information Act contained in Part 2.6 (commencing with Section
21 56) of Division 1 of the Civil Code.

22 SEC. 3. Section 11165.2 is added to the Health and Safety
23 Code, to read:

24 11165.2. (a) This section may be cited and known as the
25 Prescription Drug Monitoring Program (PDMP).

26 (b) The PDMP shall be established in state government under
27 the Department of Justice to monitor any practitioner or pharmacist
28 who has obtained approval under Section 11165.1 to access, using
29 the Internet, the electronic history of controlled substances
30 dispensed to an individual under his or her care based on data
31 contained in CURES, as well as the number, amount, and type of
32 controlled substances being dispensed to an individual under his
33 or her care, in order to control the diversion and resultant abuse
34 of, and to ensure the safe and lawful dispensing of, Schedule II,
35 Schedule III, and Schedule IV controlled substances. For the
36 purposes of this section, a "PDMP subscriber" means a practitioner
37 or pharmacist who has obtained approval under Section 11165.1
38 to access, using the Internet, the electronic history of controlled
39 substances dispensed to an individual under his or her care based
40 on data contained in CURES.

1 (c) The Department of Justice may establish, by regulation, a
2 system for the issuance to a PDMP subscriber of a citation which
3 may contain an order of abatement or an order to pay an
4 administrative fine assessed by the department, if the subscriber
5 is in violation of any provision of this chapter or any regulation
6 adopted by the department pursuant to this chapter.

7 (d) A citation system shall contain the following provisions:

8 (1) Citations shall be in writing and shall describe with
9 particularity the nature of the violation, including specific reference
10 to the provision of law or regulation of the department determined
11 to have been violated.

12 (2) Whenever appropriate, the citation shall contain an order of
13 abatement fixing a reasonable time for abatement of the violation.

14 (3) In no event shall the administrative fine assessed by the
15 department exceed two thousand five hundred dollars (\$2,500) for
16 each violation. In assessing a fine, due consideration shall be given
17 to the appropriateness of the amount of the fine with respect to
18 such factors as the gravity of the violation, the good faith of the
19 subscriber, and the history of previous violations.

20 (4) An order of abatement or a fine assessment issued pursuant
21 to a citation shall inform the subscriber that if the subscriber desires
22 a hearing to contest the finding of a violation, that hearing shall
23 be requested by written notice to the CURES program of the
24 Department of Justice within 30 days of the date of issuance of
25 the citation or assessment. Hearings shall be held pursuant to
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division
27 3 of Title 2 of the Government Code.

28 (5) In addition to requesting a hearing, the subscriber may,
29 within 10 days after service of the citation, request in writing an
30 opportunity for an informal conference with the department
31 regarding the citation. At the conclusion of the informal conference,
32 the department may affirm, modify, or dismiss the citation,
33 including any fine levied or order of abatement issued. The decision
34 shall be deemed to be a final order with regard to the citation
35 issued, including the fine levied and the order of abatement.
36 However, the subscriber does not waive its right to request a
37 hearing to contest a citation by requesting an informal conference.
38 If the citation is dismissed after the informal conference, the request
39 for a hearing on the matter of the citation shall be deemed to be
40 withdrawn. If the citation, including any fine levied or order of

1 abatement, is modified, the citation originally issued shall be
2 considered withdrawn and a new citation issued. If a hearing is
3 requested for a subsequent citation, it shall be requested within 30
4 days of service of that subsequent citation.

5 (6) Failure of a subscriber to pay a fine within 30 days of the
6 date of assessment or comply with an order of abatement within
7 the fixed time, unless the citation is being appealed, may result in
8 disciplinary action being taken by the department. If a citation is
9 not contested and a fine is not paid, the subscriber account shall
10 be terminated.

11 (7) A citation may be issued without the assessment of an
12 administrative fine.

13 (8) Assessment of administrative fines may be limited to only
14 particular violations of the law or department regulations.

15 (9) Notwithstanding any other provision of law, if a fine is paid
16 to satisfy an assessment based on the finding of a violation,
17 payment of the fine shall be represented as satisfactory resolution
18 of the matter for purposes of public disclosure.

19 (e) Administrative fines collected pursuant to this section shall
20 be deposited in a fund under the Department of Justice relating to
21 CURES. These special funds shall be utilized to provide support
22 for costs associated with informal and formal hearings under,
23 maintenance of, and updates to CURES.

24 (f) The sanctions authorized under this section shall be separate
25 from, and in addition to, any other administrative, civil, or criminal
26 remedies; however, a criminal action shall not be initiated for a
27 specific offense if a citation has been issued pursuant to this section
28 for that offense, and a citation may not be issued pursuant to this
29 section for a specific offense if a criminal action for that offense
30 has been filed.

31 SEC. 4. Section 11165.3 is added to the Health and Safety
32 Code, to read:

33 11165.3. (a) A PDMP subscriber, as defined in Section
34 11165.2, shall manually or electronically report any theft or loss
35 of prescription information or prescription forms to the CURES
36 program no later than three days after the discovery of the theft or
37 loss.

38 (b) The notification may be, reported electronically or in writing
39 utilizing a form approved by the Department of Justice.

1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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