



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	01/27/14	Bill No:	<u>Senate Bill 506</u>
Tax Program:	Sales and Use	Author:	Hill
Sponsor:	Author	Code Sections:	HSC 11100 & 11100.02
Related Bills:		Effective Date:	01/01/15

This analysis only addresses the provisions that impact the Board of Equalization (BOE).

BILL SUMMARY

This bill requires the BOE to notify retailers of the requirement to submit specified nonprescription ephedrine-containing product sales information to California’s ephedrine and related substances sales transaction database (system).

Summary of Amendments

The amendments since the last analysis, in part, substitute a vendor-contracted¹ system for the National Precursor Log Exchange (NPLEx) that governs the access and oversight of California ephedrine and related substances sales.

ANALYSIS

CURRENT LAW

Sales and Use Tax Law. Current law² imposes sales tax on the retail sale of tangible personal property (TPP) in this state. Current law³ also imposes use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The sales or use tax is computed on the retailer’s gross receipts or sales price unless the law provides a specific exemption or exclusion.

The total combined sales and use tax rates range from 7.5% to 10% based on the location of the sale. No other BOE-administered program imposes a tax or fee on nonprescription drugs.

Uniform Controlled Substances Act (Act).⁴ The Act requires any controlled substance manufacturer, wholesaler, retailer, or other person or entity in this state to submit a transaction report to the Department of Justice. Such transactions include the sale, transfer, or furnishing of specified controlled substances to any person or entity in this state or any other state. Controlled substances include ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine (related substances).

The Act also prohibits any retail distributor in a single transaction from selling more than three packages of a product that he or she knows to contain ephedrine or related substances. Additionally, the Act bars any retail distributor from knowingly selling more than nine grams of ephedrine or related substances, other than defined pediatric liquids. A first violation is a misdemeanor. Conviction of a subsequent violation subjects the

¹ The bill requires the Department of Justice to enter into a memorandum of understanding with the vendor.

² Article 1 (commencing with Section 6051) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code (RTC).

³ Article 1 (commencing with Section 6201) of Chapter 3 of Part 1 of Division 2 of the RTC.

⁴ Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

retail distributor to imprisonment in county jail for up to one year a fine of up to ten thousand dollars (\$10,000), or to both the fine and imprisonment.

PROPOSED LAW

This bill amends, repeals, and adds Section 11100 to the Act to remove provisions related to ephedrine and related substance sales.

The bill also adds and repeals Section 11100.02 to regulate ephedrine and related substances. To facilitate monitoring sales of nonprescription ephedrine products, Section 11100.02 requires a retail distributor to record specified transaction information at the point of sale. On and after July 1, 2015, the bill requires a retail distributor to transmit the transaction information immediately to a vendor that governs access and oversight of California's ephedrine and related substances transaction record system.

The requirement to transmit transaction information allows a retailer to determine if the proposed sale violates Section 11100.02 or the federal Combat Methamphetamine Epidemic Act of 2005.

This bill generally defines "retail distributor" to mean a grocery store, general merchandise store, drug store, or other related entity that sells ephedrine products for personal use. The bill defines a "grocery store," "general merchandise store," and "drug store" by reference to their Standard Industrial Classification (SIC) codes.

No later than April 1, 2014, the BOE would notify retail distributors about their requirement to submit transaction information to the transaction record system.

This measure is effective January 1, 2015, but becomes operative February 1, 2015, only if Department of Justice (DOJ) cost reimbursement is agreed upon, as provided. The bill's provisions remain in effect until January 1, 2019.

COMMENTS

- 1. Sponsor and Purpose.** The author is sponsoring this bill to provide "teeth" to existing federal law limiting pseudoephedrine product sales. The "teeth" arise from tracking ephedrine product purchases in a networked, unified electronic log. An electronic log aims to prevent a criminal from visiting multiple stores to accumulate large quantities of ephedrine product. Currently, retailers maintain such purchases in paper logs at each retail location, which precludes real-time alerts when a customer exceeds federal purchasing limits.
- 2. The January 27, 2014 amendments,** among other things, (1) require the DOJ to enter into an MOU with the National Association of Drug Diversion Investigators and the vendor of the system that governs the access and oversight of California ephedrine and related substances sales; (2) add a contingent operative date; and (3) incorporate a sunset date. The amendments do not materially impact the BOE.
- 3. BOE-related provision not problematic, but amendment necessary.** The bill requires the BOE to notify retailers about the requirement to submit ephedrine product transaction information to the ephedrine and related substances transaction system. This requirement does not pose an administrative problem for the BOE. However, Section 11100.02(e) should be amended to require the BOE to notify retailers no later than April 1, 2015, rather than April 1, 2014.

- 4. Proposed dual notice system.** Consistent with recent efforts to go paperless, the BOE proposes to notify retailers pursuant to this bill through both electronic and paper notice methods. Since the BOE transitioned sales and use tax returns from paper filing to electronic filing (eFile), most sales and use tax accounts now e-file their return. Money was saved, in part, due to reduced costs to print, mail, and process paper returns. Along with the paper return reduction, the BOE also reduced the number of special notices used to notify retailers of sales and use tax law changes.
- 5. “All Retailers” or “Retail Distributors?”** The bill requires a “retail distributor” to submit ephedrine product transactions to the transaction system. However, the bill requires the BOE to notify “all retailers” about the reporting requirement. Does the bill intend to direct the BOE to notify “all retailers” or “retail distributors,” based on the business SIC codes?

BOE staff assumes that the bill intends for the BOE to notify all “retail distributors,” as the bill defines that term. Accordingly, the BOE plans to target “retail distributors” for notification as described under Cost Estimate.

COST ESTIMATE

The bill results in absorbable BOE costs to notify retail distributors. These costs include developing, printing, and mailing (postage) a paper notice to retail distributors, as well as electronic notification. The BOE estimates that approximately 175,000 retail distributors would require notification under this bill. Of this amount, the majority would receive notification electronically, with the remainder receiving paper notification. The absorbable costs assume that the retailer notice does not include a BOE contact phone number.

REVENUE ESTIMATE

This measure does not impact state revenues.

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