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SEP 30 2011
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

To:

Office of the Attorney General

State of California

Sept. 20, 2011

I am requesting that the enclosed proposition be submitted for Title and Summary for the 2012 election year, November 6, ballot.

Submitted by

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September 30, 2011

California State Ballot Measure / Proposition for 2012
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Proposal for Title and Summary

SUMMARY

Imposes a tax on every manufacturer and importer, or other person that makes the first sale in the state, of a Schedule II, III or IV controlled substance, at the rate of $0.0025 per pill. Creates a fund to support the Controlled Substance Utilization Review and Evaluation System (CURES).

CHANGES TO EXISTING LAW

Existing federal law:
Regulates the manufacture, importation, possession, use, and distribution of certain substances, including controlled substances, and classifies these substances by Schedules based on a criteria which includes potential for abuse, currently accepted medical use for treatment in the U.S., and international treaties.

Requires the Department of Justice (DOJ) to maintain CURES for electronic monitoring of the prescribing and dispensing of Schedule II, III and IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Requires all practitioners authorized to prescribe or dispense these controlled substances to report specified information every time these controlled substances are prescribed or dispensed.

This proposition
Imposes a tax at the rate of $0.0025 per pill included in Schedule II, III, or IV upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV, or other person that makes the first sale in this state of a Schedule II, III, or IV controlled substance.

Requires the State Board of Equalization to administer and collect the tax pursuant to the procedures set forth in the Fee Collection Procedures Law. Requires the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the CURES Fund, which this propositionwould create.

Requires moneys in the fund, upon appropriation by the Legislature, to be allocated to DOJ for the cost of the CURES program, as specified.

Requires a person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV in to this state, to register with DOJ to enable the department to report specified information to the board for purposes of collecting a tax on those persons.

DOJ estimates that over 45 million prescriptions are written annually, and two billion pills are related to those prescriptions. The $0.0025 tax per pill included in Schedule II, III, or IV proposed by SB 1071 is estimated by DOJ to raise approximately $5 million in special fund revenues.

BACKGROUND AND DISCUSSION

According to the author, is a response to the steadily worsening prescription drug abuse crisis. The author states that prescription drug abuse has serious consequences for both abusers and the public. Each year, hundreds of people die from prescription drug overdose and dozens more are injured or killed by prescription drug abusers driving under the influence of medication. The author contends that the "measue" will help to curb prescription drug abuse by providing revenues to sustain the Controlled Substance Utilization Review and Evaluation System (CURES), which is designed to control the misuse, abuse, and trafficking of dangerous prescription narcotics.
It is the author's intent to impose a tax on Schedule II, III and IV drugs that are in the form of pills, that will produce roughly $5 million per year to support the CURES program.

A priority for the use of the funds would be increasing the rate at which authorized persons access information from he CURES Internet database pertaining to prescribing controlled substances, related to patient histories on being prescribed controlled substances.

Controlled substances
Controlled substances are drugs that have a high potential for abuse, and are regulated by both state and federal government. The federal government regulates the manufacture, distribution, and dispensing of controlled substances through the Controlled Substances Act of 1970 (Act). The Act ranks into five schedules those drugs known to have potential for physical or psychological harm, based on three considerations: 1) their potential for abuse; 2) their accepted medical use; and, 3) their accepted safety under medical supervision.

Schedule I controlled substances have a high potential for abuse and no generally accepted medical use such as heroin, LSD and marijuana. Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or

non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin. Schedule III and IV drugs include Vicodin, Zanex, Ambien and other anti-anxiety drugs that generally have less potential for abuse than Schedule II drugs, but are known to be mixed in specific ways to achieve a narcotic-like end product. Schedule V drugs are available over the counter.

Prescription drug abuse and drug monitoring programs
Excluding alcohol, prescription drugs are the second most commonly abused substance, after marijuana, according to a 2007 study by the Substance Abuse and Mental Health Services Administration. The National Survey on Drug Use and Health estimates that 20 to 30 percent of California's drug abusers primarily use prescription drugs, and a 2005 survey by the Drug Abuse Warning Network estimates that non-medical use of pharmaceuticals accounted for more than half a million emergency room visits in the state. The DOJ reports that Valium, Vicodin, and Oxycontin are the most prevalent pharmaceutical drugs obtained fraudulently, and Vicodin and Oxycontin are the two most abuused pharmaceutical drugs in the United States.

Most states use Prescription Drug Monitoring Programs to help regulatory and law enforcement agencies and public health officials collect and analyze controlled substance prescription data. Statewide databases contain information from pharmacists and other prescribers on drugs dispensed in the state.

According to the National Conference of State Legislatures, as of late 2010, 40 states had laws establishing the monitoring programs, and 33 states were operating such programs. The programs vary in how they identify and investigate potential abuse. Some are reactive, health-oriented monitoring programs that generate reports only in response to specific inquiries.

Other states
identify and investigate cases, as well as unsolicited reports

when suspicious behavior is detected.

Controlled Substance Utilization Review and Evaluation System (CURES)
Since 1940, DOJ has maintained a state database of dispensed prescription drugs with a high potential for misuse. This information is currently stored in the CURES program, which contains over 100 million entries of controlled substance drugs that have been dispensed in California. Each year the CURES program responds to more that 60,000 requests from authorized practitioners and pharmacists for patient prescription history information.

In September of 2009, the Attorney General launched the Prescription Drug Monitoring Program (PDMP) system allowing pre-registered users, including licensed health care prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense controlled substances, law enforcement, and regulatory boards, to access real-time patient controlled substance history information through a secure website. Prior to adoption of PDMP, doctors and pharmacists had to request information by fax, mail or phone, and wait days for a response. A $1.1 million federal grant and additional state resources were used to develop the new system. Under the system, a registered person authorized to prescribe or dispense a controlled substance is able to instantly look up a new patient's controlled substance history to determine whether the patient legitimately needs medication or is doctor shopping, the act of visiting several doctors to obtain multiple prescriptions for drugs. The system also assists persons authorized to prescribe or dispense controlled substances to assure patient safety.

In order to obtain access to the system, authorized persons must first register with CURES by submitting an application and notarized documentation including: Drug Enforcement Administration Registration, State Medical License or State Pharmacy License, and a government issued identification.

While all persons authorized to prescribe or dispense controlled substances must submit information to be entered into the system, a very small percentage of these persons

are availing themselves of the database when it comes to checking patient history before a prescription is written or dispensed. According to DOJ, out of the 185,000 persons authorized to write or dispense controlled substances, a total of 5,434 have registered to access the database and to date, 2,458 have been approved, others may be pending additional information, notary, documentation, or confirmation.

Dissemination or distribution of PDMP information to anyone other than the registered user is strictly prohibited. Disciplinary, civil or criminal actions are taken by the DOJ and/or appropriate Regulatory Board for any misuse or inappropriate accessing of patient data. HIPAA and all confidentiality and disclosure provisions of California law cover the information contained in this database, which includes the patient's dispensed drug record, including drug name; date filled; quantity, strength and number of refills; pharmacy name and license number; doctor's name and DEA number; and, prescription number.
In 2008, the Attorney General and the CURES team targeted the top 50 doctor shoppers in the state, who averaged more than 100 doctor and pharmacy visits to collect massive quantities of addictive drugs like Valium, Vicodin, and Oxycontin. The crackdown led to the arrest of dozens of suspects.

CURES also alerts law enforcement and licensed medical professionals to signs of illegal drug diversions. In 2008, the Attorney General and the Simi Valley Police Department conducted a drug-trafficking investigation which revealed a conspiracy in which stolen identities of eight doctors were used to illegally write prescriptions. The drug ring also stole the identities of dozens of citizens in order to fill the fraudulent prescriptions, and were able to obtain more than 11,000 pills for drugs like Oxycontin and Vicodin. In May 2009, the CURES team worked with the Ventura County Sheriff's Office to provide detectives with the prescribing history of a Burbank doctor accused of writing hundreds of fraudulent prescriptions. Seven of his patients died from prescription-drug overdoses.
Following an investigation, that included the CURES report of the prescriptions he had written, the doctor faced criminal charges, lost his medical license and

surrendered his license to prescribe controlled substances.

Current funding for CURES
According to documentation provided by DOJ, costs of the CURES program in the current year are funded from the following sources:

$379, 432.17 from the General Fund for personnel salary and benefits; and

$296,000 from the Department of Consumer Affairs Boards for data collection, software licenses, and department IT functions, ($10,000 - Nursing Board, $92,000 - Pharmacy Board, $150,000 - Medical Board, $4,000 - Osteopathic Medical Board, and $40,000 - Dental Board).

Additionally, a total of $9,102,323 in grant monies have been awarded to the CURES program since 2003, as follows:

Bureau of U. S. Justice Administration: $297,7452003 (2003), $350,000 (2004), 4000,000 (2006) and $4000,000 (2007), primarily for staff and onsultant time.

The Substance Abuse and Mental Health Services Administration: $454,578 (2009).

CURES has also submitted an application for Bureau of Justice Funds for 2010.

Prior legislation
SB 734 (Torlakson), Chapter 487, Statutes of 2005, authorized new tamper-resistant prescription pads and permitted online access to CURES, pending the acquisition of private funding.

SB 151 (Burton), Chapter 406, Statutes of 2003, eliminates the sunset on the CURES program, eliminates the requirement that Schedule II controlled substances prescriptions be written on triplicate forms, adds a requirement that Schedule III controlled substances be included in CURES.

AB 2655 (Matthews), Chapter 345, Statutes of 2002, extended the sunset date of the CURES program by five years. Permits a licensed health care practitioner to make a written request of the DOJ for the history of controlled substances dispensed to an individual, and permits DOJ to provide the history of controlled substances dispensed to

an individual to licensed health care practitioners and pharmacists.

SB 1000 (Johannessen) 2001 would have allowed a practitioner eligible to obtain triplicate prescription forms for Schedule II controlled substances or a pharmacist to request the history of controlled substances dispensed to an individual under his or her care based on data contained in CURES. This bill was vetoed by the Governor.

AB 2018 (Thompson), Chapter 1092, Statutes of 2000, revised prescription requirements for Schedule II controlled substances by permitting practitioners to receive more than 100 triplicate prescription blanks in a 30-day period as well as other changes.

SB 1308 (Committee on Business and Professions), Chapter 655, Statutes of 1999, extended the CURES pilot project by three years and requires DOJ to submit annual status reports on the program to the Legislature.

AB 2693 (Migden), Chapter 789, Statutes of 1998, exempts prescriptions for Schedule II controlled substances for patients with a terminal illness from triplicate prescription form requirements in existing law.

AB 3042 (Takasugi), Chapter 738, Statutes of 1996, required DOJ, contingent on the availability of funds, to establish CURES for electronic monitoring of the prescribing and dispensing of Schedule II controlled substances by all practitioners authorized to prescribe or dispense these controlled substances as a three-year pilot program.

An act to amend Section 11165 of, and to add and repeal Section 11165.05 of, the Health and Safety Code, and to add and repeal Section 17054.8 of, and to add and repeal Part 33 (commencing with Section 70001) of Division 2 of, the Revenue and Taxation Code, relating to prescription drugs taxation, to take effect immediately, tax levy.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

Existing law also requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

This Proposition would, on and after January 1, 2013, impose a tax at the rate of $0.0025 per pill included in Schedule II, III, or IV upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV, or other person that makes the first sale in this state of a Schedule II, III, or IV controlled substance. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The Proposition would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the CURES Fund, which this Proposition would create. This Proposition would require moneys in the fund, upon appropriation by the Legislature, to be allocated to the Department of Justice for the cost of administration of the CURES program, as specified.

This Proposition would also require a person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV into this state, to register with the Department of Justice to enable the department to report specified information to the board for purposes of collecting a tax on those persons.

Because this Proposition would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it 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 Proposition would provide that no reimbursement is required by this act for a specified reason.

This proposition would take effect immediately as a tax levy.

1 we find:
2 following examination:
3 (a) The CURES program is a valuable investigative, preventive,
4 and educational tool for law enforcement, regulatory boards,
educational researchers, and the health care community.
6 (b) Each year the CURES program responds to more than 60,000
7 requests from practitioners and pharmacists to (1) help identify
8 and deter drug abuse and diversion through accurate and rapid
9 tracking of Schedule II, III, and IV controlled substances, (2) help
practitioners make better prescribing decisions, and (3) cut down
11 on the misuse, abuse, and trafficking of prescription drugs in
12 California.
13 (c) The manufacture and importation of Schedules II, III, and
14 IV controlled substances have had deleterious effects on private
and public interests, including the misuse, abuse, and trafficking
16 in dangerous prescription medications resulting in injury and death.
17 The tax that is imposed by this bill on manufacturers and importers
18 of Schedules II, III, and IV controlled substances seeks to mitigate
19 these effects of the drugs by supporting the operation of the
CURES program, which has proved a cost-effective tool to help
21 to reduce the misuse, abuse, and trafficking of those drugs.
22 (d) It is the nature of these Schedule II, III, and IV controlled
23 substances that their addictive qualities and the ever present market
24 for their misuse and abuse pose inherent risks to public health that
must be systematically addressed, as by the CURES program.
26 Once these products are present in California, ad hoc enforcement
27 of conditions on distribution and criminal and civil sanctions on
28 downstream actors in the distribution system are extraordinarily
29 costly, ineffective, and inefficient means to attempt to control the
misuse, abuse, and trafficking of these substances. It is therefore
31 appropriate for manufacturers and importers, which benefit from
32 the commercial markets for these inherently dangerous products
33 with knowledge of their potential for misuse and abuse absent
34 systematic tracking and monitoring, to pay for the cost-effective
CURES program.
36 SEC. 2. Section 11165 of the Health and Safety Code is

11165. (a) To assist law enforcement and regulatory agencies
in their efforts to control the diversion and resultant abuse of
Schedule II, Schedule III, and Schedule IV controlled substances,
and for statistical analysis, education, and research, the Department
of Justice shall, contingent upon the availability of adequate funds
from the CURES Fund and from the Contingent Fund of the

Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

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

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

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

(1) The full name, address, and telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human

Services, and the gender and date of birth of the ultimate user.
(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.
(3) Pharmacy prescription number, license number, and federal controlled substance registration number.
(4) NDC (National Drug Code) number of the controlled substance dispensed.
(5) Quantity of the controlled substance dispensed.
(6) ICD-9 (diagnosis code), if available.
(7) Number of refills ordered.
(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.
(9) Date of origin of the prescription.
(10) Date of dispensing of the prescription.
SEC. 3. Section 11165.05 is added to the Health and Safety Code, to read:
11165.05. (a) A person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV into this state, shall register with the Department of Justice to enable the department to report to the State Board of Equalization the persons subject to this section and to the tax imposed pursuant to Part 33 (commencing with Section 70001) of Division 2 of the Revenue and Taxation Code.

(b) A person shall not sell or distribute any controlled substance classified in Schedule II, III, or IV in the state if the product is received or purchased from a manufacturer or importer that is not registered in accordance with the requirements of this section.

(b) A person required to register with the department shall file an annual report with the department. The annual report shall be due on or before January 1, 2013, and on or before January 1 each year thereafter, and shall provide the name, address, and telephone number of the person required to register.
(d)
(c) A person required to register with the department shall also file a quarterly report with the department. The quarterly report shall be due on the last day of the month following each quarterly period and shall provide all of the following information:

(1) The number of Schedule II, III, or IV pills the registrant has sold in this state during that quarterly reporting period.
(2) The number of Schedule II, III, or IV pills the registrant has imported into this state during that quarterly reporting period.
(3) The number of Schedule II, III, or IV pills the registrant has sold, transferred, or otherwise furnished to other persons in this state during that quarterly reporting period.
(4) Any other information the department deems necessary for the purpose of administering this section.
(e)
(d) Each registrant that is required to provide the information required by this section may be subject to audit by the department.
(f)
(e) On the last day of each month following the due date for filing a quarterly report pursuant to subdivision (d), the department shall send to the State Board of Equalization a report containing all of the following information:
(1) The name, address, and telephone number of each person required to register with the department pursuant to this section, and the necessary information regarding who owes the tax imposed pursuant to Part 33 (commencing with Section 70001) of Division 2 of the Revenue and Taxation Code on each Schedule II, III, or IV pill sold in this state in the amount of $0.0025 per pill for the previous quarterly period.
(2) The number of Schedule II, III, or IV pills each registrant manufactured in this state or imported into this state.

CONTROLLED SUBSTANCES TAX LAW

70001. This part shall be known and may be cited as the Controlled Substances Tax Law.

70002. For purposes of this part:

(a) "CURES program" means the Controlled Substance Utilization Review and Evaluation System program described in Section 11165 of the Health and Safety Code.
(b) "Importer" means a person that imports controlled substances classified in Schedule II, III, or IV into this state, for sale or distribution in this state.
(c) "Manufacturer" means a person that manufactures controlled substances classified in Schedule II, III, or IV sold in this state, either directly or indirectly.
(d) "Quarterly report" means the report that a registrant is

required to file with the Department of Justice pursuant to Section 11165.05 of the Health and Safety Code.
(e) "Registrant" means a manufacturer or importer of controlled substances classified in Schedule II, III, or IV that is required to annually register and report certain information to the Department of Justice pursuant to Section 11165.05 of the Health and Safety Code.
70003. On and after January 1, 2013, a tax is hereby imposed at the rate of $0.0025 per pill included in Schedule II, III, or IV upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV, or other person that makes the first sale in this state of a Schedule II, III, or IV controlled substance. The tax imposed by this part is for the purpose of reimbursing the Department of Justice for the cost of administering the CURES program, which provides for the electronic monitoring of the prescribing and dispensing of controlled substances classified in Schedule II, III, or IV.

70004. The board shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part and references to "feepayer" shall include a person required to pay the tax imposed by this part.

70005. Each person required to pay the tax shall prepare and file with the board a return in the form prescribed by the board containing information as the board deems necessary or appropriate for the proper administration of this part. The return shall be filed on or before the last day of the calendar month following the

calendar quarter to which it relates, together with a remittance payable to the board for the amount of tax due for that period.

70006. The board may prescribe those forms and reporting requirements as are necessary to implement the tax, including, but not limited to, information regarding the total amount of tax due.

70007. (a) (1) The CURES Fund is hereby created in the State Treasury. The CURES Fund shall consist of all taxes, interest, penalties, and other amounts collected pursuant to this part, less refunds and reimbursement to the board for expenses incurred in the administration and collection of the tax.

(2) Money in the CURES Fund shall, upon appropriation by the Legislature, be used to reimburse the Franchise Tax Board for administrative costs related to Section 17054.8.
(b) All moneys in the CURES Fund less refunds and reimbursement pursuant to subdivision (a), shall, upon appropriation by the Legislature, be allocated to the Department of Justice for the following:
(1) The cost of the administration of the CURES program as required by this section and Section 11165.05 of the Health and Safety Code.
(2) The cost of the maintenance of, and any improvements to, the CURES program.
(3) The cost of education and outreach relating to the CURES program.
(4) The cost of the investigation of abuses of the CURES program.
70008. This part shall remain in effect only until January 1, 2016, and as of that date is repealed.
SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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. 7. This Proposition provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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