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Crimes Review of Selected 1972 California Legislation

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Crimes

Crimes; blowguns

Penal Code §§12580, 12581, 12582 (new).

SB 1489 (Walsh); STATS 1972, Ch 945

(Effective August 16, 1972)

Chapter 945 adds article 4 (commencing with §12580) to the Penal Code to prohibit the knowing manufacture, sale, offering for sale, possession, or use of a blowgun or blowgun ammunition. Section 12580 defines "blowgun" as a hollow tube designed and intended to be used as a tube through which a dart is propelled by force of the breath of the user. Section 12581 defines "blowgun ammunition" as a dart designed and intended for use in a blowgun. Section 12582 provides that any person who knowingly manufactures, sells, offers for sale, possesses, or uses a blowgun or blowgun ammunition in this state is guilty of a misdemeanor. This act was an urgency statute necessary since blowguns have been developed that can cause serious injury and death. The unregulated manufacture, possession, sale and use of blowguns was deemed an immediate hazard to the citizens of this state [CAL. STATS. 1972, c. 945, §2].

Crimes; possession of tools for vending-machine theft

Penal Code §466.3 (new).

AB 2120 (Quimby); STATS 1972, Ch 1088

Chapter 1088 adds Section 466.3 to the Penal Code to provide that any person who possesses a key, tool, instrument, explosive, or device, or a drawing, print, or mold of a key, tool, instrument, explosive, or device designed to open, break into, tamper with, or damage a coin-operated machine, with intent to commit a theft from such machine is guilty of a misdemeanor. The term "coin-operated machine" includes any automatic vending machine or any part thereof, parking meter, coin telephone, coin laundry machine, coin dry cleaning machine, amusement machine, music machine, vending machine dispensing goods or services, or money changer. Violation of this section is punishable by imprisonment in the county jail for not more than one year,

or by a fine of not more than \$1,000, or by both fine and imprisonment.

COMMENT

With the increasing use of coin-operated machines, there has undoubtedly been an increase in the number of thefts from such machines. It appears that the Legislature has enacted Section 466.3 to aid law enforcement officers in combating such crimes. The addition of Section 466.3 corresponds to Section 466, which prohibits the possession of tools used for burglarizing buildings, and Section 466.5, which prohibits the possession of tools used for breaking into motor vehicles.

Crimes; detention center fires

Penal Code §451b (new).

AB 746 (Monagan); STATS 1972, Ch 916

Support: Sheriff's Office, San Joaquin County

Chapter 916 adds Section 451b to the Penal Code to provide that it shall be a misdemeanor for any prisoner who is in custody in any local detention facility (defined in §6031.4 of the Penal Code) to maliciously start an unauthorized fire. An "unauthorized fire" is defined as one wilfully set without the express or implied permission of the penal institution. Such fires include, but are not limited to, fires started in mattresses, papers, rags, blankets, and paper cups, without regard to the potential physical damage or harm that may naturally be expected to result therefrom.

COMMENT

There are three current Penal Code sections regarding destruction or injury to jails and places of confinement. Section 448a (arson) provides that any person who wilfully and maliciously sets fire to or causes to be burned any jail or other public building is guilty of a felony punishable by imprisonment for two to twenty years. Section 606 (malicious mischief) states that every person who wilfully and intentionally destroys or injures any place of confinement is guilty of a felony punishable by a fine not exceeding \$10,000 and imprisonment in state prison not exceeding five years. However, where damage or injury is determined to be \$200 or less, such person is guilty of a misdemeanor. Section 4600 (demolishing prisons and jails) provides that every person who wilfully and intentionally destroys or injures any jail or prison

is guilty of a felony punishable as specified in Section 606 (*supra*). Where damage or injury to jail *property* is determined to be \$200 or less, such person is guilty of a misdemeanor.

It appears that Section 451b has been added to the Penal Code to encompass those situations (not covered by the preceding statutes) where a prisoner sets a small fire merely to vex, annoy, and harass, rather than with the intent to destroy or injure the building, or where there is no actual physical damage to the building or property [Interview with Thomas Carroll, Committee Consultant to the Assembly Criminal Justice Committee, Sacramento, California, July 11, 1972].

Although they may cause little or no actual damage, such fires in limited ventilated areas may create large amounts of smoke, which might cause panic and resulting injury in prison and detention facilities where inmate movement is highly restricted [Letter from Sheriff Michael Canlis to the Pacific Law Journal, July 13, 1972].

It should be noted that AB 746, as introduced, specified that violation of Section 451b was to be deemed a felony punishable by imprisonment in state prison for a term not to exceed five years, or in county jail for a term not to exceed one year. Such sentence would have run consecutively with any sentence the prisoner was serving at the time the offense was committed, or with any sentence imposed subsequent to the commission of the offense if the prisoner was in custody awaiting trial or sentence. However, as enacted, Chapter 916 provides that the penalty for violation of Section 451b is merely a misdemeanor.

See Generally:

- 1) CAL. PEN. CODE §§448a, 606, 4600.

Crimes; bringing contraband into youth authority facilities

Penal Code §§171a, 171b (repealed); Welfare and Institutions Code §§1001.5, 1001.7 (new).

SB 507 (Deukmejian); STATS 1972, Ch 497

Support: Department of Youth Authority

Section 1001.5 has been added to the Welfare and Institutions Code to make it a crime for any person (not lawfully authorized) to knowingly bring or send, or to assist in the bringing or sending, into any institution or camp or the grounds thereof, administered by the California Youth Authority any of the following:

- (1) Any narcotic or restricted dangerous drug, the possession of

which is prohibited by §11000 *et seq.* and §11901 *et seq.* of the Health and Safety Code.

- (2) Any firearm.
- (3) Any weapon or explosive.
- (4) Any alcoholic beverage.

Violation of this section shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for not more than five years.

Section 171a of the Penal Code, which has been repealed, prohibited similar acts with respect to reformatories. Violation of this section was a felony.

Chapter 497 also adds §1001.7 to the Welfare and Institutions Code to make it a crime for a person who has been previously convicted of a felony and confined in any state prison in this state to come upon the grounds of an institution belonging to the California Youth Authority, in the nighttime, without the consent of the officer in charge, and to refuse or fail to leave upon being requested to do so by an employee of the institution. Violation of this section is a misdemeanor.

Section 171b of the Penal Code formerly provided felony sanction for such a violation with regard to a reformatory.

COMMENT

The word "reformatory" has become obsolete with reference to the Youth Authority which operates "institutions" and "camps" [See CAL. WELF. & INST. CODE §§1000-1002], and in fact, its meaning has always been somewhat unclear. "The word reformatory, in a strict sense, designates those special institutions whose primary purpose is the reformation of juvenile offenders, but it seems in some statutory provisions to be used with general reference to prisons, while in others it is apparently distinguished from a prison" [39 CAL. JUR. 2d *Prisons and Prisoners* §§3, 99 (1957)]. The enactment of the new sections of the Welfare and Institutions Code and the repeal of the Penal Code sections concerning reformatories, should clarify the law in this area. Perhaps other code sections which use the term "reformatories" should also be clarified [*e.g.* CAL. PEN. CODE §§107, 109, 110, 171, 673, 1168].

Existing law makes it a *misdemeanor to knowingly permit or aid in the escape* of an inmate from any institution under the jurisdiction of the Youth Authority [CAL. WELF. & INST. CODE §1152]. Under §1001.5, a person who *brings any alcoholic beverage* on the grounds

of a Youth Authority institution could be subjected to *felony* sanctions. A question thus arises as to whether the punishment provisions of these two sections should be more closely tailored to the gravity of the act committed.

See Generally:

- 1) CAL. PEN. CODE §§4573, 4573.5, 4573.6, 4574.

Crimes; false or facsimile bombs

Penal Code §148.1 (amended).

AB 547 (McAlister); STATS 1972, Ch 1142

Chapter 1142 amends Penal Code §148.1, by adding subdivision (c), to provide that it shall be a crime for any person to maliciously give, mail, send, or cause to be sent any false or facsimile bomb to another person, or to place or cause to be placed any false or facsimile bomb, with the *intent* that any other person think it is a real bomb, and with the *knowledge* that it is a false or facsimile bomb. Prior to amendment, §148.1 only provided that it was unlawful for any person to maliciously inform any other person that a bomb or other explosive has been placed or secreted in any public or private place knowing that such information is false.

Crimes described in §148.1 are punishable by imprisonment in the state prison not to exceed three years, or by imprisonment in the county jail not to exceed one year.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Governmental Authority* §806 (1963).
- 2) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 303 (1972).
- 3) Annot., 93 A.L.R.2d 304 (1964).

Crimes; fraudulent acquisition of county assistance vouchers

Welfare and Institutions Code §17410 (new).

AB 973 (Sieroty); STATS 1972, Ch 370

Section 17410 has been added to the Welfare and Institutions Code to provide that it shall be unlawful for any person to buy or receive, with the intent to defraud, a county assistance voucher issued for services or merchandise without furnishing such services or merchandise. An offender may be punished by not more than one year in the state prison and/or a fine not exceeding \$10,000; or not more than one year in the county jail and and/or a fine not exceeding \$1,000.

COMMENT

Section 14107 of the Welfare and Institutions Code and Section 72 of the Penal Code provide that it shall be unlawful to present a false or fraudulent claim to a governmental entity. Section 17410 of the Welfare and Institutions Code makes the *acquisition* of county assistance vouchers, with the intent to defraud, a crime. Prior to the addition of this section, the mere acquisition would not have been a crime unless the person, from whom the vouchers were obtained, had been defrauded [CAL. PEN. CODE §484; CAL. CIV. CODE §1572; R. PERKINS, CRIMINAL LAW 246 (2d ed. 1969)]. Section 17410 requires that the recipient of said vouchers have an "intent to defraud" at the time of acquisition, but apparently it need not be an "intent to defraud" the person from whom the vouchers are being received. Thus where the person, from whom the vouchers are obtained, has not been defrauded (i.e., where he intentionally sells the vouchers for less than full value in order to receive cash) but the recipient intends to eventually defraud the government (by cashing them in or using them to provide merchandise or services for himself), the recipient will have violated Section 17410 if he bought or received county assistance vouchers without providing the services or merchandise for which they were intended.

The apparent intent of the Legislature in enacting this code section is to supplement various sections in the Penal, Civil, and Welfare and Institutions Codes in order to insure that vouchers will be used for intended services by proper recipients.

See Generally:

- 1) W. PROSSER, TORTS 683, 695, 714 (4th ed. 1971).
- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §186 (7th ed. 1960).

Crimes; Medi-Cal fraud

Welfare and Institutions Code §14026 (new).

AB 850 (MacGillivray); STATS 1972, Ch 1043

Section 14026 has been added to the Welfare and Institutions Code to make it a misdemeanor for a Medi-Cal beneficiary to furnish, give or lend his Medi-Cal card or labels to anyone other than a provider of service. This section also makes it a misdemeanor for anyone who knows he is not eligible for Medi-Cal benefits to represent himself to any provider as a Medi-Cal beneficiary.

Crimes; ticket scalping

Penal Code §346 (new).

SB 349 (Wedworth); STATS 1972, Ch 529

Support: City of Inglewood

Section 346 has been added to the Penal Code to make it a misdemeanor for any person to sell a ticket to an entertainment event if it is sold: (1) on the grounds of, or in the stadium, arena, theater or other place where an event for which admission tickets are sold is to be held or is being held; (2) without the written permission of the owner or operator of the property on which an entertainment event is to be held or is being held; (3) for a price which is in excess of the price that is printed or endorsed upon the ticket; and (4) such ticket was obtained for the purpose of resale.

COMMENT

Prior to the enactment of Chapter 528, California had only two statutes regulating "scalping." Section 18710 of the Business and Professions Code prohibits the sale of boxing or wrestling admission tickets for more than the price printed on the ticket; Section 4301 of the Agricultural Code prohibits the sale of tickets to any entertainment event on the property of a district agricultural association for a price in excess of the maximum price printed on the ticket without written permission of such association. Penal Code Section 346 will extend the prohibitions against scalping to all property, including private property, on which any entertainment event is held or to be held.

Crimes; aviation and parachuting

Public Utilities Code §21407.5 (amended).

AB 729 (Chappie); STATS 1972, Ch 311

Section 21407.5 of the Public Utilities Code prohibits operating an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor or narcotics. Chapter 311 amends this section by prohibiting the same activity while under the influence of "restricted dangerous drugs" (as defined in Section 11901 of the Health and Safety Code). Chapter 311 also makes it unlawful for any person to engage in "parachuting for sport" while under the influence of intoxicating liquor, narcotics, or restricted dangerous drugs.

Violation of Section 21407.5 is punishable by imprisonment in the county jail for not less than 30 days nor more than six months or by a

fine of not less than \$250 nor more than \$1,000 or by both fine and imprisonment. A violation which proximately causes bodily injury to any person other than the violator is punishable by imprisonment in the state prison for not less than one year or more than five years or in the county jail for not less than 90 days nor more than one year and by fine of not less than \$250 nor more than \$5,000 [CAL. PUB. UTIL. CODE §21407.6]. Furthermore, the court may prohibit the violator from operating an aircraft within the state for a period not exceeding one year [CAL. PUB. UTIL. CODE §21408].

Crimes; selling goods or services on airport property

Penal Code §602.4 (new).

SB 1244 (Marks); STATS 1972, Ch 784

Chapter 784 adds Section 602.4 to the Penal Code to provide that it shall be a misdemeanor for any person to enter or remain on airport property owned by a city, county, or city and county *but located in another county*, and sell, peddle, or offer for sale any goods, merchandise, property, or services of any kind whatsoever, to members of the public, on or from airport property, without express written consent of the governing board of the airport property, or its duly authorized representative. This prohibition does not apply to charter limousines licensed by the Public Utilities Commission nor shall anything in this section affect the power of a county, city, or city and county to regulate the sale of goods, merchandise, property, or services.

COMMENT

Where an airport belonging to one city or county is located in another county (such as San Francisco International Airport in San Mateo County, or Ontario Airport owned by Los Angeles), the county or city owning the airport was powerless to pass ordinances which would regulate the access to that airport of persons who would engage in conduct now covered by Section 602.4. Section 602.4 will allow the city or county owning an airport located in another county to control the access of persons engaged in the selling of goods or services on or from the airport property.

Crimes; vessels—failure to stop

Harbors and Navigation Code §663.6 (new); §668 (amended).

SB 236 (Carpenter); STATS 1972, Ch 454

Support: Department of Navigation and Ocean Development; California Association of Harbor Masters and Port Captains; California District Attorneys' and Peace Officers' Associations

Chapter 454 adds Section 663.6 to the Harbors and Navigation Code to provide that every vessel (subject to Chapter 5, Division 3 of the Harbors and Navigation Code), if underway and lawfully ordered to stop and lie to by a peace officer or harbor policeman authorized to enforce the provisions of this chapter, shall stop immediately and lie to, or shall maneuver in such a way as to permit the peace officer or harbor police vessel to come alongside. A vessel is not required to stop pursuant to Section 663.6 unless so ordered by a peace officer who is either in the uniform of a law enforcement agency or the harbor police or in a vessel that is distinctly marked as belonging to a law enforcement agency or to the harbor police.

COMMENT

Section 663.5 of the Harbors and Navigation Code specifies the enforcement authority of harbor policemen to stop any vessel and issue citations regarding violations of Chapter 5 (commencing with §650). However, prior to the enactment of Chapter 454, the Harbors and Navigation Code contained no provision requiring a vessel operator's obedience to orders, signals, or directions of harbor policemen. Section 663.6 appears to fill this void by requiring the operator of a vessel to comply with a law enforcement officer's order to stop.

It should be noted that Chapter 454 amended Section 668(b) of the Harbors and Navigation Code to provide that violation of Section 663.6 constitutes a misdemeanor subject to a fine not to exceed \$100 for each violation. However, A.B. 26 [CAL. STATS. 1972, c. 1121; this volume *infra*, at 514] (relating to motor boat noise), enacted subsequent to Chapter 454, also amended Section 668 and did not include penalties for violation of Section 663.6. Therefore, it appears that since the later chaptered bill controls, *the provisions of Section 663.6 may now stand without an applicable enforcement provision.*

Crimes; controlled substances—narcotics

Health and Safety Code Division 10 (commencing with §11000), Division 10.5 (commencing with §11901), Division 10.8 (commencing with §11940), Division 10.9 (commencing with §11990) (repealed); Division 10 (commencing with §11000) (new); Business

and Professions Code §2391 (amended); Vehicle Code §§1803, 12806, 12809, 13202, 13355.5, 13800 (amended).

AB 192 (Cambell); STATS 1972, Ch 1407

Support: State Department of Justice; State Board of Pharmacy

Repeals Division 10 pertaining to narcotics, Division 10.5 pertaining to restricted dangerous drugs, Division 10.8 pertaining to the State Office of Narcotics and Drug Abuse Coordination, Division 10.9, pertaining to methamphetamine and phenylacetone, of the Health and Safety Code; enacts the "California Uniform Controlled Substances Act," Division 10 of the Health and Safety Code.

Chapter 1407 enacts the California Uniform Controlled Substances Act (hereinafter cited as Act). Chapter 1 (Sections 11000-11032) specifies the general provisions and definitions of the Act. Such definitions correspond to definitions in the federal Controlled Substances Act of 1970 [21 U.S.C. §802 (1970)] and Section 11903 of the Health and Safety Code, prior to repeal. A controlled substance is a drug, substance, or immediate precursor which is included in schedules I through V, inclusive, pursuant to Chapter 2 (commencing with Section 11050) (*infra*). Pursuant to Section 11032, whenever reference is made to the term "narcotics" in any provision of law outside this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in schedules I and II. Whenever reference is made to restricted dangerous drugs, it shall be construed to mean controlled substances classified in schedules III and IV. Any reference to the term marijuana shall be construed to mean marijuana as defined in this division.

Chapter 2 (Sections 11053-11058) establishes five schedules for controlled substances. Said schedules correspond to those schedules set forth in the Controlled Substance Act of 1970 [21 U.S.C. §812 (1970)]. Schedule I includes opiates; opium derivatives, including heroine, codeine, and morphine; and any material or preparation which contains any quantity of certain hallucinogenic substances, including marijuana, lysergic acid diethylamide (LSD), mescaline, peyote, psilocybin, and tetrahydrocannabinols (THC). Schedule II includes opiates not listed in schedule I, including methadone; opium poppies and poppy straw; coca leaves and derivatives thereof; and any material or preparation containing any quantity of certain substances having a potential for abuse associated with a stimulant effect on the central nervous system, including amphetamine and methamphetamine. Schedule III includes substances having a potential for abuse associated with a depressant effect

on the central nervous system, including any derivatives of barbituric acid; and certain limited quantities of drugs including codeine and morphine. Schedule IV contains any substances having a potential for abuse associated with a depressant effect on the central nervous system, including barbitol and phenobarbital. Section V includes any preparation containing quantities of certain narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

Chapter 1407 repeals Chapter 1.5 (Sections 1904-1907.9) of Division 10.5 of the Health and Safety Code, relating to reporting and licensing, and reinstates said provisions into Chapter 3 (Sections 11100-11136) of the Act. Chapter 3 (Sections 11161-11283) of Division 10 of the Health and Safety Code, relating to prescriptions, is repealed, and its provisions are reinstated into Chapter 4 (Sections 11150-11208) of the Act. Chapter 1407 makes revisions in the regulations concerning prescription records and emergency prescriptions. Pharmacists are now required to maintain prescription records for a period of two years, rather than three years as previously required (Sections 11179 and 11205, formerly sections 11175 and 11280). An individual authorized to prescribe controlled substances may issue a prescription for substances in schedule II other than on the official prescription form, under emergency circumstances where failure to issue such prescription might result in loss of life or intense suffering. In such an emergency an *oral* prescription is now authorized. In the event such an emergency prescription is issued, the prescriber shall within 72 hours submit the prescription on the official prescription form to the pharmacy filling the emergency prescription. If the prescriber does not provide such official form, the pharmacists shall immediately inform the Department of Justice (Section 11176, formerly Section 11166.08).

Chapter 1407 repeals Chapter 4 (Sections 11330-11451) of Division 10 of the Health and Safety Code, relating to the lawful medical use of narcotics other than for treatment of addicts, the treatment of addicts for addiction, physicians' reports and veterinarians, and Chapter 6 (Sections 11570-11575), relating to the sale of narcotics without prescription, and reinstates said provisions into Chapter 5 (Sections 11210-11256) of the Act.

Chapter 1407 adopts the existing offenses and penalties relating to narcotics, for violations concerning schedule I and II substances; the existing offenses and penalties relating to restricted dangerous drugs,

for schedule III, IV, and V substances; and retains marijuana offenses and penalties. Chapter 5 (Sections 11500-11557) of Division 10, relating to said offenses and penalties, and Division 10.9 (Sections 11990-11991), pertaining to methamphetamine and phenylacetone, are repealed, and said provisions are reinstated into Chapter 6 (Sections 11350-11384).

Chapter 1407 repeals Chapter 2 (Sections 11100-11107) of Division 10, relating to the Bureau of Narcotic Enforcement, and reinstates said provisions into Chapter 7 (Sections 11450-11454) of the Act. It should be noted that S.B. 919 [CAL. STATS. 1972, c. 1377] amends the Health and Safety Code to abolish the Bureau of Narcotic Enforcement and transfer its functions to the Department of Justice and the Attorney General (see this volume at 635).

Article 2 (Section 11650-11657), relating to the seizure and disposition of narcotics, and Article 3 (Sections 11680-11688), relating to the prosecution and disposition of fines, have been repealed and said provisions reinstated in Chapter 8 (Section 11470-11486) and Chapter 9 (Sections 11500-11508) of the Act. Article 4.5 (Sections 11721-11729), pertaining to addicts, Article 4.7 (Sections 11750-11754), relating to treatment control units, Article 5 (Sections 11780-11797), relating to abatement, and Article 6 (Sections 11850-11853), pertaining to registration of offenders, have been repealed and said provisions reinstated in Chapter 10 (Sections 11550-11595) of the Act. Section 11553 has been added to provide that the fact that a person is, or has been, or is suspected of being, a user of marijuana is not alone sufficient grounds to invoke Section 11551 or 11552 (Sections 11722 and 11723, prior to repeal), relating to tests to determine addiction. Section 11553 shall not be construed to limit the discretion of a judge to invoke said sections if the court has reason to believe a person is, or has been, a user of narcotics or drugs other than marijuana. Section 11590(c), relating to the registration of offenders, specifies that this section (formerly Section 11850) does not apply to a misdemeanor conviction for possession of marijuana, or to a conviction under Section 11550 (formerly Section 11721), involving one under the influence of marijuana (See A.B. 414, CAL. STATS. 1972 c. 796, this volume at 409). Section 11595 specifies that the provisions of former Article 6 (commencing with Section 11850) (*supra*) which are hereby repealed shall remain in effect as to any person who comes within such provisions.

Chapter 11 (Sections 11600-11604) provides that the Attorney General, the Board of Pharmacy, and other agencies shall carry out educational programs designed to prevent and deter misuse and abuse of

controlled substances, and to encourage research on such misuse and abuse. The Attorney General may enter into contracts for such educational and research activities, and may authorize the possession and distribution of controlled substances by persons engaged in research. Such persons may withhold the names and characteristics of individuals who are the subjects of such research.

Chapter 12 (Sections 11640-11643) contains provisions relating to the State Office of Narcotics and Drug Abuse, as specified in S.B. 714 [CAL. STATS. 1972, c. 1255, see this volume at 405]. Chapter 13 (Sections 11650 and 11651) specifies miscellaneous provisions relating to prosecution of violations of the law occurring *prior to the effective date* of this division. Such prosecutions are not affected or abated by this division. Civil seizures or forfeitures and injunctive proceedings commenced prior to such date are not affected by this division. Furthermore, all administrative proceedings pending under prior law shall be continued and brought to final determination in accord with the laws and rules in effect prior to the effective date of this division.

Article 1 (Sections 11610-11629), relating to the forfeiture of vehicles involved in illegal narcotics and drug trafficking, has been repealed.

Chapter 1407 amends Section 2391 of the Business and Professions Code and Sections 1803, 12806, 12809, 13202, 13355.5, and 13800 of the Vehicle Code by making technical changes in conformity to the changes in Division 10 of the Health and Safety Code, as specified above.

COMMENT

In 1970, Congress approved, and the President signed, Public Law 91-513 which enacted the Uniform Controlled Substances Act of 1970 [21 U.S.C. §801 *et seq.* (1970)]. This act establishes five schedules of drugs using the criteria that those drugs with the most potential for abuse should be in schedule 1 and those with the least potential for abuse should be in schedule 5 [21 U.S.C. §§811, 812 (1970)]. Penalties for abuse are specified according to the schedule in which the abused drug is placed [21 U.S.C. §841 (1970)]. Furthermore, this act establishes registration and licensing requirements for manufacturers and retailers of controlled substances [21 U.S.C. §821 *et seq.* (1970)].

Prior to the enactment of Chapter 1407, California had essentially two categories of drugs; narcotics and restricted dangerous drugs. Each category had requirements dealing with prescription, sale, use, and reg-

istration. The California Uniform Controlled Substances Act establishes a uniform classification of drugs corresponding to those standards specified by federal law. However, almost all existing provisions of California law relating to prescriptions, use, penalties, and law enforcement have been left intact. Therefore, it appears that Chapter 1407 was enacted, not to change existing California law, but to make it conform to federal law whenever possible. Such conformity will assist drug manufacturers and retailers who are required to maintain licensing and reporting procedures for both federal and state purposes.

See Generally:

- 1) 21 U.S.C. §801 *et seq.* (1970).

Crimes; dangerous drugs

Business and Professions Code §4227.3 (new).

AB 482 (Crown); STATS 1972, Ch 1141

Chapter 1141 adds §4227.3 to the Business and Professions Code to prohibit a manufacturer's sales representative from distributing any dangerous drug as a *complimentary sample* without the written request of a physician, dentist, podiatrist or veterinarian. Such requests shall contain the names and addresses of the supplier and requester, the name and quantity of the specific dangerous drug desired, and shall be preserved by the supplier with the records required by §4227.

Section 4227 of the Business and Professions Code provides that no person shall furnish any dangerous drug except on the prescription of a physician, dentist, podiatrist or veterinarian. Section 4227 does not apply to the *sale* of dangerous drugs by a manufacturer, wholesaler, or pharmacy to one another or to a physician, dentist, podiatrist or veterinarian or to a laboratory when sales and purchase records are kept which correctly give the date, names and addresses of the supplier and buyer, and the drug and its quantity.

Crimes; pharmaceutical prescriptions

Business and Professions Code §4036; Health and Safety Code §§11007, 11166, 11166.02 (amended).

SB 1143 (Marler); STATS 1972, Ch 1030

(Effective July 1, 1973)

Support: Board of Pharmacy

Opposition: California Medical Association

Prior to amendment, Section 4036 of the Business and Professions

Code provided that a written prescription must bear the signature of the prescriber, the name and address of the patient, the name and quantity of the drug or device prescribed, directions for use, and the date of issue. Chapter 1030 amends this section to require that a written prescription must also bear, either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, and his license classification. If a controlled substance [36 FED. REG. 7802-7805 (Apr. 24, 1971)] is prescribed, the prescription must also bear the prescriber's federal registry number. Chapter 1030 amends Sections 11007, 11166, and 11166.02 of the Health and Safety Code to conform to the definition and requirements of a written prescription as stated above. The apparent intent in requiring such additional information is to help eliminate prescription forgeries.

Section 11162 of the Health and Safety Code provides that no person shall write, issue, fill, compound, or dispense a prescription that does not conform to the requirements of prescriptions set forth in Division 10 (commencing with Section 11000). Violation of this section is punishable by imprisonment in the state prison not exceeding six years or in a county jail not exceeding one year [CAL. HEALTH AND SAFETY CODE §11715.7].