

5036

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the sale of over-the-counter methamphetamine precursor drugs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new
2 section 391-00 to read as follows:
3 S 391-00. SALE OF METHAMPHETAMINE PRECURSOR DRUGS. 1. FOR THE PURPOSES
4 OF THIS SECTION "METHAMPHETAMINE PRECURSOR DRUG" SHALL MEAN ANY
5 COMPOUND, MIXTURE, OR PREPARATION CONTAINING EPHEDRINE OR PSEUDOEPHED-
6 RINE AS ITS SOLE ACTIVE INGREDIENT OR AS ONE OF ITS ACTIVE INGREDIENTS.
7 2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
8 LIABILITY COMPANY, OR OTHER ENTITY SHALL SELL IN A SINGLE OVER-THE-COUN-
9 TER SALE MORE THAN TWO PACKAGES OF ANY METHAMPHETAMINE PRECURSOR DRUG OR
10 A COMBINATION OF METHAMPHETAMINE PRECURSOR DRUGS OR ANY COMBINATION OF
11 PACKAGES EXCEEDING A TOTAL WEIGHT OF NINE GRAMS, CALCULATED AS THE BASE.
12 3. OVER-THE-COUNTER SALES OF METHAMPHETAMINE PRECURSOR DRUGS ARE
13 LIMITED TO:
14 (A) PACKAGES CONTAINING NOT MORE THAN A TOTAL OF 3.6 GRAMS OF ONE OR
15 MORE METHAMPHEAMINE PRECURSOR DRUGS, CALCULATED IN TERMS OF EPHEDRINE
16 BASE OR PSEUDOEPHEDRINE BASE; OR
17 (B) FOR NONLIQUID PRODUCTS INCLUDING GEL CAPSULES, SALES IN BLISTER
18 PACKS, WHERE EACH BLISTER CONTAINS NOT MORE THAN TWO DOSAGE UNITS, OR,
19 IF THE USE OF BLISTER PACKS IS NOT TECHNICALLY FEASIBLE, SALES IN UNIT
20 DOSE PACKETS OR POUCHES.
21 4. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
22 LIABILITY COMPANY, OR OTHER ENTITY THAT OFFERS FOR SALE METHAMPHETAMINE
23 PRECURSOR DRUGS IN AN OVER-THE COUNTER SALE SHALL ENSURE THAT ALL PACK-
24 AGES OF THE DRUGS ARE DISPLAYED BEHIND A CHECKOUT COUNTER WHERE THE
25 PUBLIC IS NOT PERMITTED AND ARE OFFERED FOR SALE ONLY BY A LICENSED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 PHARMACIST, A REGISTERED PHARMACY TECHNICIAN, OR A PHARMACY CLERK. SUCH
2 PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY
3 COMPANY, OR OTHER ENTITY SHALL ENSURE THAT THE PERSON MAKING THE SALE
4 REQUIRES THE BUYER:

5 (A) TO PROVIDE PHOTOGRAPHIC IDENTIFICATION SHOWING THE BUYER'S DATE OF
6 BIRTH; AND

7 (B) TO SIGN A WRITTEN ELECTRONIC DOCUMENT DETAILING THE DATE OF THE
8 SALE, THE NAME OF THE BUYER, AND THE AMOUNT OF THE DRUG SOLD.

9 5. A DOCUMENT DESCRIBED UNDER PARAGRAPH (B) OF SUBDIVISION FOUR OF
10 THIS SECTION SHALL BE RETAINED BY THE SELLING PERSON, FIRM, CORPORATION,
11 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY FOR
12 AT LEAST THREE YEARS AND MUST AT ALL REASONABLE TIMES BE OPEN TO THE
13 INSPECTION OF ANY LAW ENFORCEMENT AGENCY.

14 6. NOTHING IN THIS SECTION REQUIRES THE BUYER TO OBTAIN A PRESCRIPTION
15 FOR THE PURCHASE OF ANY METHAMPHETAMINE PRECURSOR DRUG.

16 7. NO PERSON MAY ACQUIRE THROUGH OVER-THE-COUNTER SALES MORE THAN NINE
17 GRAMS OF METHAMPHETAMINE PRECURSOR DRUGS, CALCULATED AS THE BASE, WITHIN
18 A THIRTY DAY PERIOD.

19 8. NO PERSON MAY SELL IN AN OVER-THE-COUNTER SALE A METHAMPHETAMINE
20 PRECURSOR DRUG TO A PERSON UNDER THE AGE OF EIGHTEEN YEARS. IT IS AN
21 AFFIRMATIVE DEFENSE TO A CHARGE UNDER THIS SECTION IF THE DEFENDANT
22 PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT REASONABLY
23 AND IN GOOD FAITH RELIED ON A GOVERNMENT ISSUED IDENTIFICATION CARD,
24 INCLUDING BUT NOT LIMITED TO A DRIVER'S LICENSE.

25 9. A PERSON WHO KNOWINGLY VIOLATES SUBDIVISION TWO, THREE, FOUR, FIVE,
26 SIX, SEVEN OR EIGHT OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND MAY
27 BE SENTENCED TO IMPRISONMENT FOR NOT MORE THAN NINETY DAYS, OR TO
28 PAYMENT OF A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

29 10. AN OWNER, OPERATOR, SUPERVISOR, OR MANAGER OF ANY BUSINESS ENTITY
30 THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS WHOSE EMPLOYEE OR
31 AGENT IS CONVICTED OF OR CHARGED WITH VIOLATING SUBDIVISION TWO, THREE,
32 FOUR, FIVE, SIX, SEVEN OR EIGHT OF THIS SECTION IS NOT SUBJECT TO THE
33 CRIMINAL PENALTIES FOR VIOLATING ANY OF SUCH SUBDIVISION IF THE PERSON:

34 (A) DID NOT HAVE PRIOR KNOWLEDGE OF, PARTICIPATE IN, OR DIRECT THE
35 EMPLOYEE OR AGENT TO COMMIT THE VIOLATION; AND

36 (B) DOCUMENTS THAT AN EMPLOYEE TRAINING PROGRAM WAS IN PLACE TO
37 PROVIDE THE EMPLOYEE OR AGENT WITH INFORMATION ON THE STATE AND FEDERAL
38 LAWS AND REGULATIONS REGARDING METHAMPHETAMINE PRECURSOR DRUGS.

39 11. ANY PERSON EMPLOYED BY ANY BUSINESS ENTITY THAT OFFERS FOR SALE
40 METHAMPHETAMINE PRECURSOR DRUGS WHO SELLS SUCH A DRUG TO ANY PERSON IN A
41 SUSPICIOUS TRANSACTION SHALL REPORT THE TRANSACTION TO THE OWNER, SUPER-
42 VISOR, OR MANAGER OF SUCH ENTITY. THE OWNER, SUPERVISOR, OR MANAGER MAY
43 REPORT THE TRANSACTION TO LOCAL LAW ENFORCEMENT. A PERSON WHO REPORTS
44 INFORMATION UNDER THIS SUBDIVISION IN GOOD FAITH IS IMMUNE FROM CIVIL
45 LIABILITY RELATING TO THE REPORT.

46 12. THIS SECTION DOES NOT APPLY TO:

47 (A) PEDIATRIC PRODUCTS LABELED PURSUANT TO FEDERAL REGULATION PRIMARI-
48 LY INTENDED FOR ADMINISTRATION TO CHILDREN UNDER TWELVE YEARS OF AGE
49 ACCORDING TO LABEL INSTRUCTIONS;

50 (B) METHAMPHETAMINE PRECURSOR DRUGS CERTIFIED BY THE STATE BOARD OF
51 PHARMACY AS BEING MANUFACTURED IN A MANNER THAT PREVENTS THE DRUG FROM
52 BEING USED TO MANUFACTURE METHAMPHETAMINE;

53 (C) METHAMPHETAMINE PRECURSOR DRUGS IN LIQUID FORM; OR

54 (D) COMPOUNDS, MIXTURES, OR PREPARATIONS IN POWDER FORM WHERE PSEU-
55 DOEPHEDRINE CONSTITUTES LESS THAN ONE PERCENT OF ITS TOTAL WEIGHT AND IS
56 NOT ITS SOLE ACTIVE INGREDIENT.

1 13. THE STATE BOARD OF PHARMACY, IN CONSULTATION WITH THE DEPARTMENT
2 OF PUBLIC SAFETY, SHALL CERTIFY METHAMPHETAMINE PRECURSOR DRUGS THAT
3 MEET THE REQUIREMENTS OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF THIS
4 SECTION AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.

5 14. WHOLESALE DRUG DISTRIBUTORS LICENSED AND REGULATED BY THE STATE
6 BOARD OF PHARMACY AND REGISTERED WITH AND REGULATED BY THE UNITED STATES
7 DRUG ENFORCEMENT ADMINISTRATION ARE EXEMPT FROM THE METHAMPHETAMINE
8 PRECURSOR DRUG STORAGE REQUIREMENTS OF THIS SECTION.

9 15. THIS SECTION PREEMPTS ALL LOCAL ORDINANCES OR REGULATIONS GOVERN-
10 ING THE SALE BY A BUSINESS ESTABLISHMENT OF OVER-THE-COUNTER PRODUCTS
11 CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE. ALL ORDINANCES ENACTED PRIOR TO
12 THE EFFECTIVE DATE OF THIS SECTION ARE VOID.

13 S 2. This act shall take effect on the one hundred twentieth day after
14 it shall have become a law. Effective immediately, the addition, amend-
15 ment, and/or repeal of any rule or regulation necessary for the imple-
16 mentation of this act on its effective date is authorized to be made on
17 or before such date.