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I N S E N A T E

March 30, 2012

Introduced by Sens. VALESKY, LIBOUS, O'MARA, YOUNG -- 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 3.6 GRAMS PER DAY OR MORE THAN NINE GRAMS PER THIRTY
10 DAY PERIOD OF EPHEDRINE OR PSEUDOEPHEDRINE BASE, OR THEIR SALTS, ISOM-
11 ERS, OR SALTS OF ISOMERS. THE LIMITS SHALL APPLY TO THE TOTAL AMOUNT OF
12 BASE EPHEDRINE AND PSEUDOEPHEDRINE CONTAINED IN THE PRODUCTS, AND NOT
13 THE OVERALL WEIGHT OF THE PRODUCTS.
14 3. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
15 LIABILITY COMPANY, OR OTHER ENTITY THAT OFFERS FOR SALE METHAMPHETAMINE
16 PRECURSOR DRUGS IN AN OVER-THE-COUNTER SALE SHALL ENSURE THAT ALL PACK-
17 AGES OF THE DRUGS ARE DISPLAYED BEHIND A CHECKOUT COUNTER OR IN A LOCKED
18 CASE WHERE THE PUBLIC IS NOT PERMITTED. SUCH PERSON, FIRM, CORPORATION,
19 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY
20 SHALL:
21 (A) ENSURE THAT THE PERSON MAKING THE SALE REQUIRES THE BUYER TO
22 PROVIDE VALID GOVERNMENT ISSUED PHOTOGRAPHIC IDENTIFICATION SHOWING THE
23 BUYER'S DATE OF BIRTH; AND
24 (B) RECORD THE NAME AND ADDRESS OF THE PURCHASER; NAME AND QUANTITY OF
25 PRODUCT PURCHASED; DATE AND TIME PURCHASED; AND PURCHASER IDENTIFICATION
26 TYPE AND NUMBER, SUCH AS DRIVER LICENSE STATE AND NUMBER, AND REQUIRE
27 THE BUYER'S SIGNATURE IN A PAPER OR ELECTRONIC LOGBOOK.

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

LBD11064-15-2

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

6 5. PROVIDED THAT THE SYSTEM IS AVAILABLE WITHOUT A CHARGE FOR ACCESS-
7 ING IT, BEGINNING JANUARY FIRST, TWO THOUSAND THIRTEEN, A RETAILER
8 SHALL, BEFORE COMPLETING A SALE UNDER THIS SECTION, ELECTRONICALLY
9 SUBMIT THE REQUIRED INFORMATION TO THE NATIONAL PRECURSOR LOG EXCHANGE
10 (NPLEX) ADMINISTERED BY THE NATIONAL ASSOCIATION OF DRUG DIVERSION
11 INVESTIGATORS (NADDI). ABSENT NEGLIGENCE, WANTONNESS, RECKLESSNESS, OR
12 DELIBERATE MISCONDUCT, ANY RETAILER UTILIZING THE ELECTRONIC SALES
13 TRACKING SYSTEM IN ACCORDANCE WITH THIS SUBDIVISION SHALL NOT BE CIVILLY
14 LIABLE AS A RESULT OF ANY ACT OR OMISSION IN CARRYING OUT THE DUTIES
15 REQUIRED BY THIS SUBDIVISION AND SHALL BE IMMUNE FROM LIABILITY TO ANY
16 THIRD PARTY UNLESS THE RETAILER HAS VIOLATED ANY PROVISION OF THIS
17 SUBDIVISION IN RELATION TO A CLAIM BROUGHT FOR SUCH VIOLATION.

18 (A) IF A RETAILER SELLING A NONPRESCRIPTION PRODUCT CONTAINING PSEU-
19 DOEPHEDRINE OR EPHEDRINE EXPERIENCES MECHANICAL OR ELECTRONIC FAILURE OF
20 THE ELECTRONIC SALES TRACKING SYSTEM AND IS UNABLE TO COMPLY WITH THE
21 ELECTRONIC SALES TRACKING REQUIREMENT, THE RETAILER SHALL MAINTAIN A
22 WRITTEN LOG OR AN ALTERNATIVE ELECTRONIC RECORDKEEPING MECHANISM UNTIL
23 SUCH TIME AS THE RETAILER IS ABLE TO COMPLY WITH THE ELECTRONIC SALES
24 TRACKING REQUIREMENT.

25 (B) NADDI SHALL FORWARD STATE TRANSACTION RECORDS IN NPLEX TO THE
26 APPROPRIATE STATE AGENCY WEEKLY, AND PROVIDE REAL-TIME ACCESS TO NPLEX
27 INFORMATION THROUGH THE NPLEX ONLINE PORTAL TO LAW ENFORCEMENT IN THE
28 STATE AS AUTHORIZED BY THE AGENCY.

29 (C) THIS SYSTEM SHALL BE CAPABLE OF GENERATING A STOP SALE ALERT,
30 WHICH SHALL BE A NOTIFICATION THAT COMPLETION OF THE SALE WOULD RESULT
31 IN THE RETAILER OR PURCHASER VIOLATING THE QUANTITY LIMITS SET FORTH IN
32 THIS SECTION. THE RETAILER SHALL NOT COMPLETE THE SALE IF THE SYSTEM
33 GENERATES A STOP SALE ALERT. THE SYSTEM SHALL CONTAIN AN OVERRIDE FUNC-
34 TION THAT MAY BE USED BY A DISPENSER OF EPHEDRINE OR PSEUDOEPHEDRINE WHO
35 HAS A REASONABLE FEAR OF IMMINENT BODILY HARM IF THEY DO NOT COMPLETE A
36 SALE. EACH INSTANCE IN WHICH THE OVERRIDE FUNCTION IS UTILIZED SHALL BE
37 LOGGED BY THE SYSTEM.

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

40 7. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
41 LIABILITY COMPANY, OR OTHER ENTITY WHO KNOWINGLY VIOLATES SUBDIVISION
42 TWO, THREE, FOUR OR FIVE OF THIS SECTION SHALL, FOR THE FIRST SUCH
43 VIOLATION, BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED
44 DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS PER VIOLATION, RECOVERABLE IN
45 AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICIPALITY OR
46 POLITICAL SUBDIVISION.

47 8. AN OWNER, OPERATOR, SUPERVISOR, OR MANAGER OF ANY BUSINESS ENTITY
48 THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS WHOSE EMPLOYEE OR
49 AGENT IS CONVICTED OF OR CHARGED WITH VIOLATING SUBDIVISION TWO, THREE,
50 FOUR OR FIVE OF THIS SECTION IS NOT SUBJECT TO THE CIVIL PENALTIES OR
51 CRIMINAL PENALTIES FOR VIOLATING ANY OF SUCH SUBDIVISIONS IF THE PERSON:

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

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

1 9. ANY PERSON EMPLOYED BY ANY BUSINESS ENTITY THAT OFFERS FOR SALE
2 METHAMPHETAMINE PRECURSOR DRUGS WHO SELLS SUCH A DRUG TO ANY PERSON IN A
3 SUSPICIOUS TRANSACTION SHALL REPORT THE TRANSACTION TO THE OWNER, SUPER-
4 VISOR, OR MANAGER OF SUCH ENTITY. THE OWNER, SUPERVISOR, OR MANAGER MAY
5 REPORT THE TRANSACTION TO LOCAL LAW ENFORCEMENT. A PERSON WHO REPORTS
6 INFORMATION UNDER THIS SUBDIVISION IN GOOD FAITH IS IMMUNE FROM CIVIL
7 LIABILITY RELATING TO THE REPORT.

8 10. THIS SECTION DOES NOT APPLY TO:

9 (A) METHAMPHETAMINE PRECURSOR DRUGS CERTIFIED BY THE STATE BOARD OF
10 PHARMACY AS BEING MANUFACTURED IN A MANNER THAT PREVENTS THE DRUG FROM
11 BEING USED TO MANUFACTURE METHAMPHETAMINE; OR

12 (B) METHAMPHETAMINE PRECURSOR DRUGS OBTAINED PURSUANT TO A VALID
13 PRESCRIPTION.

14 11. THE STATE BOARD OF PHARMACY, IN CONSULTATION WITH THE DEPARTMENT
15 OF PUBLIC SAFETY, SHALL CERTIFY METHAMPHETAMINE PRECURSOR DRUGS THAT
16 MEET THE REQUIREMENTS OF PARAGRAPH (B) OF SUBDIVISION TEN OF THIS
17 SECTION AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.

18 12. THIS SECTION PREEMPTS ALL LOCAL ORDINANCES OR REGULATIONS GOVERN-
19 ING THE SALE BY A BUSINESS ESTABLISHMENT OF PRODUCTS CONTAINING EPHED-
20 RINE OR PSEUDOEPHEDRINE. ALL ORDINANCES ENACTED PRIOR TO THE EFFECTIVE
21 DATE OF THIS SECTION ARE VOID.

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