S T A T E O F N E W Y O R K

4130

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the public health law, in relation to the prescription drug reimportation protection program

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

Section 1. The executive law is amended by adding a new section 216-e to read as follows:

S 216-E. PRESCRIPTION DRUG REIMPORTATION PROTECTION PROGRAM. 1. THE SUPERINTENDENT SHALL ESTABLISH A PROGRAM TO INVESTIGATE ACTUAL AND/OR SUSPECTED CASES OF REIMPORTATION OF UNSAFE DRUGS WITHIN THIS STATE AND MAY ASSIGN EMPLOYEES AS DEEMED NECESSARY FOR THE PROPER OPERATION OF SUCH PROGRAM.

2. THE PROGRAM SHALL PROVIDE THAT THE STATE POLICE MAY INVESTIGATE, AS PROVIDED IN THIS SECTION, ANY INTERNET WEBSITE WHICH OFFERS OR PROVIDES A MECHANISM TO SELL PRESCRIPTION DRUGS TO CONSUMERS IN NEW YORK FROM ANOTHER COUNTRY OR ANY ENTITY ACTING AS A MIDDLEMAN OR AGENT IN THE IMPORTATION OR REIMPORTATION FOR SALE OF PRESCRIPTION DRUGS FROM OTHER COUNTRIES. THE PROGRAM SHALL PROVIDE THAT THE STATE POLICE SHALL INVESTIGATE ANY COMPLAINT FROM A GOVERNMENT OFFICIAL, OR FROM AN INDIVIDUAL, CLAIMING THAT PRESCRIPTION DRUGS BEING IMPORTED OR REIMPORTED BY SUCH ENTITY OR THROUGH SUCH WEBSITE ARE ADULTERATED OR MISLABELED OR OTHERWISE IN VIOLATION OF SECTION SIXTY-EIGHT HUNDRED ELEVEN OF THE EDUCATION LAW.

3. THE PROGRAM SHALL FURTHER PROVIDE THAT THE STATE POLICE SHALL ACT AS THE COORDINATING AGENCY RESPONDING TO CASES OF SUSPECTED IMPORTATION OR REIMPORTATION OF PRESCRIPTION DRUGS IN A MANNER THAT IS IN VIOLATION OF SUCH SECTION SIXTY-EIGHT HUNDRED ELEVEN OF THE EDUCATION LAW. THE SUPERINTENDENT OF STATE POLICE SHALL BY REGULATION ESTABLISH UNIFORM PROCEDURES FOR INVESTIGATION AND THE RECEIPT OF SUCH COMPLAINTS FROM OTHER AGENCIES INVOLVED IN SUCH CASES.

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

LBD04386-01-1

4. THE SUPERINTENDENT, IN COOPERATION WITH THE DEPARTMENT OF HEALTH, THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE DEPARTMENT OF AGRICULTURE AND MARKETS, AND OTHER PERTINENT AGENCIES, SHALL PROMULGATE SUCH ADDITIONAL RULES AND REGULATIONS WHICH IN THE SUPERINTENDENT'S DISCRETION ARE NECESSARY FOR THE EFFICIENT OPERATION OF THIS SECTION. THESE REGULATIONS SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

A. THE ESTABLISHMENT OF UNIFORM PROCEDURES TO BE USED WHENEVER A LAW ENFORCEMENT OR REGULATORY AGENCY OR OTHER AGENCY BECOMES INVOLVED IN A SUSPECTED IMPORTATION OR REIMPORTATION OF PRESCRIPTION DRUGS IN A MANNER THAT IS IN VIOLATION OF SUCH SECTION SIXTY-EIGHT HUNDRED ELEVEN OF THE EDUCATION LAW. SUCH REGULATIONS SHALL REQUIRE THAT THE STATE POLICE PROVIDE DIRECT INVESTIGATIVE ASSISTANCE OR SUPPORT SERVICES TO ANY LAW ENFORCEMENT OR REGULATORY AGENCY UPON REQUEST;

B. THE ESTABLISHMENT OF A COMPUTERIZED CENTRAL DATA BASE, LOCATED AT DIVISION HEADQUARTERS, WHICH WILL FUNCTION AS AN INFORMATION MANAGEMENT AND RETRIEVAL SYSTEM FOR SUCH MATTERS. NOTIFICATION OF ALL SUCH CASES MADE TO LAW ENFORCEMENT, REGULATORY AGENCIES OR OTHER AGENCIES SHALL BE REPORTED TO THE CENTRAL DATA BASE WITHIN FIVE HOURS OF SUCH NOTIFICATION;

C. AUTHORIZATION, UPON REQUEST, TO USE THE SCIENTIFIC CRIME DETECTION LABORATORY TO ANALYZE EVIDENCE IN CONNECTION WITH STATE POLICE CASES OR CASES THAT ORIGINATE WITH OTHER LAW ENFORCEMENT, REGULATORY AGENCIES OR OTHER AGENCIES; AND

D. REPORTING OF ALL SUCH COMPLAINTS TO THE COMMISSIONER OF HEALTH FOR USE IN THE CENTRAL REGISTRY WHICH SUCH COMMISSIONER IS REQUIRED TO DEVELOP, AND TO THE FEDERAL BUREAU OF INVESTIGATION, THE FOOD AND DRUG ADMINISTRATION AND/OR OTHER APPROPRIATE FEDERAL AGENCY CHARGED WITH MONITORING AND PROSECUTING THE IMPORTATION OR REIMPORTATION OF DRUGS WHICH ARE MISLABELED OR WHICH SHOW EVIDENCE OF TAMPERING OR ADULTERATION OR OTHER VIOLATIONS OF STATE LAW.

5. GOOD FAITH REPORTING OR DISCLOSURE PURSUANT TO THE STATE POLICE AND REPORTS BY THE STATE POLICE TO THE DEPARTMENT OF HEALTH SHALL NOT CONSTITUTE LIBEL OR SLANDER OR A VIOLATION OF THE RIGHT OF PRIVACY OR PRIVILEGED COMMUNICATION. ANY PERSON WHO IN GOOD FAITH REPORTS CASES OF SUSPECTED IMPORTATION OR REIMPORTATION OF PRESCRIPTION DRUGS IN A MANNER THAT IS IN VIOLATION OF SECTION SIXTY-EIGHT HUNDRED ELEVEN OF THE EDUCATION LAW SHALL BE IMMUNE FROM CIVIL AND CRIMINAL LIABILITY FOR ANY ACTION TAKEN IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

S 2. Section 206 of the public health law is amended by adding a new subdivision 28 to read as follows:

28. (A) THE COMMISSIONER SHALL ESTABLISH A REGISTRY OF WEBSITES AND ENTITIES WHICH OFFER OR PROVIDE A MECHANISM TO SELL PRESCRIPTION DRUGS TO CONSUMERS IN NEW YORK FROM ANOTHER COUNTRY AND SHALL POST SUCH REGISTRY ON A HEALTH DEPARTMENT WEBSITE ON THE INTERNET DEDICATED TO PROVIDING INFORMATION FOR SUCH REGISTRY. DATA TO BE PUBLISHED ON SUCH HEALTH DEPARTMENT WEBSITE SHALL INCLUDE:

(I) THE NAME OF THE WEBSITE OR ENTITY WHICH OFFERS OR PROVIDES A MECHANISM TO SELL PRESCRIPTION DRUGS TO CONSUMERS IN NEW YORK FROM ANOTHER COUNTRY,

(II) THE NUMBER OF COMPLAINTS CONCERNING SUCH WEBSITE OR ENTITY,

(III) CONVICTIONS, IF KNOWN, OF THE PARTIES OPERATING THE WEBSITE, FOR IMPORTING OR REIMPORTING PRESCRIPTION DRUGS WHICH ARE ADULTERATED OR MISLABELED OR OTHERWISE IN VIOLATION OF SECTION SIXTY-EIGHT HUNDRED ELEVEN OF THE EDUCATION LAW,

(IV) WHETHER THE WEBSITE OR ENTITY HAS PERMISSION FROM THE APPROPRIATE FEDERAL AGENCY TO IMPORT OR REIMPORT PRESCRIPTION DRUGS INTO THIS COUNTRY, AND

(V) THE HEALTH DEPARTMENT WEBSITE SHALL ADDITIONALLY PROVIDE A CLEAR EXPLANATION OF FEDERAL LAW CONCERNING IMPORTATION OR REIMPORTATION OF PRESCRIPTION DRUGS FROM ANOTHER COUNTRY INTO THIS COUNTRY.

(B) GOOD FAITH REPORTING OR DISCLOSURE BY THE COMMISSIONER PURSUANT TO THE REQUIREMENTS OF THIS SUBDIVISION SHALL NOT CONSTITUTE LIBEL OR SLANDER OR A VIOLATION OF THE RIGHT OF PRIVACY OR PRIVILEGED COMMUNICATION.

S 3. This act shall take effect immediately.