

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

8384--C

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

Introduced by M. of A. CYMBROWITZ, MAGEE -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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,

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

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1 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY
2 SHALL:

3 (A) ENSURE THAT THE PERSON MAKING THE SALE REQUIRES THE BUYER TO
4 PROVIDE VALID GOVERNMENT ISSUED PHOTOGRAPHIC IDENTIFICATION SHOWING THE
5 BUYER'S DATE OF BIRTH; AND

6 (B) RECORD THE NAME AND ADDRESS OF THE PURCHASER; NAME AND QUANTITY OF
7 PRODUCT PURCHASED; DATE AND TIME PURCHASED; AND PURCHASER IDENTIFICATION
8 TYPE AND NUMBER, SUCH AS DRIVER LICENSE STATE AND NUMBER, AND REQUIRE
9 THE BUYER'S SIGNATURE IN A PAPER OR ELECTRONIC LOGBOOK.

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

15 5. PROVIDED THAT THE SYSTEM IS AVAILABLE WITHOUT A CHARGE FOR ACCESS-
16 ING IT, BEGINNING ON THE ONE HUNDRED TWENTIETH DAY AFTER THIS SECTION
17 SHALL HAVE BECOME A LAW, A RETAILER SHALL, BEFORE COMPLETING A SALE
18 UNDER THIS SECTION, ELECTRONICALLY SUBMIT THE REQUIRED INFORMATION TO
19 THE NATIONAL PRECURSOR LOG EXCHANGE (NPLEX) ADMINISTERED BY THE NATIONAL
20 ASSOCIATION OF DRUG DIVERSION INVESTIGATORS (NADDI). ABSENT NEGLIGENCE,
21 WANTONNESS, RECKLESSNESS, OR DELIBERATE MISCONDUCT, ANY RETAILER UTILIZ-
22 ING THE ELECTRONIC SALES TRACKING SYSTEM IN ACCORDANCE WITH THIS SUBDI-
23 VISION SHALL NOT BE CIVILLY LIABLE AS A RESULT OF ANY ACT OR OMISSION IN
24 CARRYING OUT THE DUTIES REQUIRED BY THIS SUBDIVISION AND SHALL BE IMMUNE
25 FROM LIABILITY TO ANY THIRD PARTY UNLESS THE RETAILER HAS VIOLATED ANY
26 PROVISION OF THIS SUBDIVISION IN RELATION TO A CLAIM BROUGHT FOR SUCH
27 VIOLATION.

28 (A) IF A RETAILER SELLING A NONPRESCRIPTION PRODUCT CONTAINING PSEU-
29 DOEPHEDRINE OR EPHEDRINE EXPERIENCES MECHANICAL OR ELECTRONIC FAILURE OF
30 THE ELECTRONIC SALES TRACKING SYSTEM AND IS UNABLE TO COMPLY WITH THE
31 ELECTRONIC SALES TRACKING REQUIREMENT, THE RETAILER SHALL MAINTAIN A
32 WRITTEN LOG OR AN ALTERNATIVE ELECTRONIC RECORDKEEPING MECHANISM UNTIL
33 SUCH TIME AS THE RETAILER IS ABLE TO COMPLY WITH THE ELECTRONIC SALES
34 TRACKING REQUIREMENT.

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

39 (C) THIS SYSTEM SHALL BE CAPABLE OF GENERATING A STOP SALE ALERT,
40 WHICH SHALL BE A NOTIFICATION THAT COMPLETION OF THE SALE WOULD RESULT
41 IN THE RETAILER OR PURCHASER VIOLATING THE QUANTITY LIMITS SET FORTH IN
42 THIS SECTION. THE RETAILER SHALL NOT COMPLETE THE SALE IF THE SYSTEM
43 GENERATES A STOP SALE ALERT. THE SYSTEM SHALL CONTAIN AN OVERRIDE FUNC-
44 TION THAT MAY BE USED BY A DISPENSER OF EPHEDRINE OR PSEUDOEPHEDRINE WHO
45 HAS A REASONABLE FEAR OF IMMINENT BODILY HARM IF THEY DO NOT COMPLETE A
46 SALE. EACH INSTANCE IN WHICH THE OVERRIDE FUNCTION IS UTILIZED SHALL BE
47 LOGGED BY THE SYSTEM.

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

50 7. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
51 LIABILITY COMPANY, OR OTHER ENTITY WHO KNOWINGLY VIOLATES SUBDIVISION
52 TWO, THREE, FOUR OR FIVE OF THIS SECTION SHALL, FOR THE FIRST SUCH
53 VIOLATION, BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN TWO HUNDRED
54 FIFTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS PER VIOLATION, RECOVER-
55 ABLE IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICI-
56 PALITY OR POLITICAL SUBDIVISION.

1 8. AN OWNER, OPERATOR, SUPERVISOR, OR MANAGER OF ANY BUSINESS ENTITY
2 THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS WHOSE EMPLOYEE OR
3 AGENT IS CONVICTED OF OR CHARGED WITH VIOLATING SUBDIVISION TWO, THREE,
4 FOUR OR FIVE OF THIS SECTION IS NOT SUBJECT TO THE CIVIL PENALTIES OR
5 CRIMINAL PENALTIES FOR VIOLATING ANY OF SUCH SUBDIVISIONS IF THE PERSON:
6 (A) DID NOT HAVE PRIOR KNOWLEDGE OF, PARTICIPATE IN, OR DIRECT THE
7 EMPLOYEE OR AGENT TO COMMIT THE VIOLATION; AND
8 (B) DOCUMENTS THAT AN EMPLOYEE TRAINING PROGRAM WAS IN PLACE TO
9 PROVIDE THE EMPLOYEE OR AGENT WITH INFORMATION ON THE STATE AND FEDERAL
10 LAWS AND REGULATIONS REGARDING METHAMPHETAMINE PRECURSOR DRUGS.
11 9. THIS SECTION DOES NOT APPLY TO:
12 (A) METHAMPHETAMINE PRECURSOR DRUGS CERTIFIED BY THE STATE BOARD OF
13 PHARMACY AS BEING MANUFACTURED IN A MANNER THAT PREVENTS THE DRUG FROM
14 BEING USED TO MANUFACTURE METHAMPHETAMINE; OR
15 (B) METHAMPHETAMINE PRECURSOR DRUGS OBTAINED PURSUANT TO A VALID
16 PRESCRIPTION.
17 10. THE STATE BOARD OF PHARMACY, IN CONSULTATION WITH THE DEPARTMENT
18 OF PUBLIC SAFETY, SHALL CERTIFY METHAMPHETAMINE PRECURSOR DRUGS THAT
19 MEET THE REQUIREMENTS OF PARAGRAPH (B) OF SUBDIVISION NINE OF THIS
20 SECTION AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.
21 11. THIS SECTION PREEMPTS ALL LOCAL ORDINANCES OR REGULATIONS GOVERN-
22 ING THE SALE BY A BUSINESS ESTABLISHMENT OF PRODUCTS CONTAINING EPHE-
23 DRINE OR PSEUDOEPHEDRINE. ALL ORDINANCES ENACTED PRIOR TO THE EFFECTIVE
24 DATE OF THIS SECTION ARE VOID.
25 S 2. This act shall take effect on the one hundred twentieth day after
26 it shall have become a law. Effective immediately, the addition, amend-
27 ment, and/or repeal of any rule or regulation necessary for the imple-
28 mentation of this act on its effective date is authorized to be made on
29 or before such date.