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:

Section 1. The general business law is amended by adding a new section 391-oo to read as follows:

S 391-oo. SALE OF METHAMPHETAMINE PRECURSOR DRUGS. 1. FOR THE PURPOSES OF THIS SECTION "METHAMPHETAMINE PRECURSOR DRUG" SHALL MEAN ANY COMPOUND, MIXTURE, OR PREPARATION CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE AS ITS SOLE ACTIVE INGREDIENT OR AS ONE OF ITS ACTIVE INGREDIENTS.

2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SHALL SELL IN A SINGLE OVER-THE-COUNTER SALE MORE THAN 3.6 GRAMS PER DAY OR MORE THAN NINE GRAMS PER THIRTY DAY PERIOD OF EPHEDRINE OR PSEUDOEPHEDRINE BASE, OR THEIR SALTS, ISOMERS, OR SALTS OF ISOMERS. THE LIMITS SHALL APPLY TO THE TOTAL AMOUNT OF BASE EPHEDRINE AND PSEUDOEPHEDRINE CONTAINED IN THE PRODUCTS, AND NOT THE OVERALL WEIGHT OF THE PRODUCTS.

3. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS IN AN OVER-THE-COUNTER SALE SHALL ENSURE THAT ALL PACKAGES OF THE DRUGS ARE Displayed BEHIND A CHECKOUT COUNTER OR IN A LOCKED CASE WHERE THE PUBLIC IS NOT PERMITTED. SUCH PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SHALL:

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

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

LBD11064-04-1
(B) RECORD THE NAME AND ADDRESS OF THE PURCHASER; NAME AND QUANTITY OF
PRODUCT PURCHASED; DATE AND TIME PURCHASED; AND PURCHASER IDENTIFICATION
TYPE AND NUMBER, SUCH AS DRIVER LICENSE STATE AND NUMBER, AND REQUIRE
THE BUYER'S SIGNATURE IN A LOGBOOK, EXCEPT THAT SUCH REQUIREMENT DOES
NOT APPLY TO ANY PURCHASE BY AN INDIVIDUAL OF A SINGLE SALES PACKAGE IF
THAT PACKAGE CONTAINS NOT MORE THAN SIXTY MILLIGRAMS OF PSEUDOEPHEDRINE.

4. A DOCUMENT DESCRIBED UNDER PARAGRAPHS (A) AND (B) OF SUBDIVISION
THREE OF THIS SECTION SHALL BE RETAINED BY THE SELLING PERSON, FIRM,
corporation, partnership, association, limited liability company, or
other entity for at least three years and must at all reasonable times
be open to the inspection of any law enforcement agency.

5. PROVIDED THAT THE SYSTEM IS AVAILABLE WITHOUT A CHARGE FOR ACCESS-
ING IT, BEGINNING JANUARY FIRST, TWO THOUSAND TWELVE, A RETAILER SHALL,
BEFORE COMPLETING A SALE UNDER THIS SECTION, ELECTRONICALLY SUBMIT THE
REQUIRED INFORMATION TO THE NATIONAL PRECURSOR LOG EXCHANGE (NPLEX)
ADMINISTERED BY THE NATIONAL ASSOCIATION OF DRUG DIVERSION INVESTIGATORS
(NADDI), EXCEPT THAT SUCH REQUIREMENT DOES NOT APPLY TO ANY PURCHASE BY
AN INDIVIDUAL OF A SINGLE SALES PACKAGE IF THAT PACKAGE CONTAINS NOT
MORE THAN SIXTY MILLIGRAMS OF PSEUDOEPHEDRINE. ABSENT NEGLIGENCE,
WANTONNESS, RECKLESSNESS, OR DELIBERATE MISCONDUCT, ANY RETAILER UTILIZ-
ing THE ELECTRONIC SALES TRACKING SYSTEM IN ACCORDANCE WITH THIS SUBDI-
VISION SHALL NOT BE CIVILLY LIABLE AS A RESULT OF ANY ACT OR OMISION IN
CARRYING OUT THE DUTIES REQUIRED BY THIS SUBDIVISION AND SHALL BE IMMUNE
FROM LIABILITY TO ANY THIRD PARTY UNLESS THE RETAILER HAS VIOLATED ANY
PROVISION OF THIS SUBDIVISION IN RELATION TO A CLAIM BROUGHT FOR SUCH
VIOLATION.

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

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

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

(D) A RETAILER SELLING A METHAMPHETAMINE PRECURSOR DRUG MAY SEEK AN
EXEMPTION FROM SUBMITTING TRANSACTIONS TO THE SYSTEM IN WRITING TO THE
STATE BOARD OF PHARMACY STATING THE REASONS THEREFORE. THE BOARD OF
PHARMACY MAY GRANT AN EXEMPTION FOR GOOD CAUSE SHOWN, BUT IN NO EVENT
SHALL SUCH EXEMPTION EXCEED ONE HUNDRED EIGHTY DAYS. ANY RETAILER THAT
RECEIVES AN EXEMPTION SHALL MAINTAIN A HARDCOPY LOGBOOK AND MUST STILL
REQUIRE THE PURCHASER TO PROVIDE THE INFORMATION REQUIRED UNDER THIS
SECTION BEFORE COMPLETION OF ANY SALE. THE LOGBOOK SHALL BE MAINTAINED
AS A RECORD OF EACH SALE FOR INSPECTION BY ANY LAW ENFORCEMENT OFFICER
OR INSPECTOR OF THE BOARD OF PHARMACY DURING NORMAL BUSINESS HOURS.
(E) A RETAILER IS EXEMPT FROM THE REQUIREMENT THAT IT TRANSMIT ELECTRONIC TRANSACTION RECORDS AS DESCRIBED UNDER THIS SUBDIVISION IF THE RETAILER SUBMITS A REQUEST TO THE BOARD OF PHARMACY FOR SUCH AN EXEMPTION AND THE RETAILER HAS NOT SOLD MORE THAN TWENTY METHAMPHETAMINE PRECURSOR DRUG PRODUCTS IN ANY SEVEN DAY PERIOD DURING THE SIXTY DAY PERIOD PRECEDING THE DATE THE WRITTEN REQUEST IS TRANSMITTED.

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

7. NO PERSON MAY ACQUIRE THROUGH OVER-THE-COUNTER SALES MORE THAN 3.6 GRAMS PER DAY OR MORE THAN NINE GRAMS PER THIRTY DAY PERIOD OF EPHEDRINE OR PSEUDOEPHEDRINE BASE, OR THEIR SALTS, ISOMERS, OR SALTS OF ISOMERS. THE LIMITS SHALL APPLY TO THE TOTAL AMOUNT OF BASE EPHEDRINE AND PSEUDOEPHEDRINE CONTAINED IN THE PRODUCTS, AND NOT THE OVERALL WEIGHT OF THE PRODUCTS.

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

9. A PERSON WHO KNOWINGLY VIOLATES SUBDIVISION TWO, THREE, FOUR, FIVE, SEVEN OR EIGHT OF THIS SECTION SHALL, FOR THE FIRST SUCH VIOLATION, BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS, AND FOR A SECOND OR SUBSEQUENT VIOLATION, BE GUILTY OF A CRIMINAL VIOLATION AND MAY BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT MORE THAN THIRTY DAYS, OR SUBJECT TO A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

10. AN OWNER, OPERATOR, SUPERVISOR, OR MANAGER OF ANY BUSINESS ENTITY THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS WHOSE EMPLOYEE OR AGENT IS CONVICTED OF OR CHARGED WITH VIOLATING SUBDIVISION TWO, THREE, FOUR, FIVE, SIX, SEVEN OR EIGHT OF THIS SECTION IS NOT SUBJECT TO THE CRIMINAL PENALTIES FOR VIOLATING ANY OF SUCH SUBDIVISIONS IF THE PERSON: (A) DID NOT HAVE PRIOR KNOWLEDGE OF, PARTICIPATE IN, OR DIRECT THE EMPLOYEE OR AGENT TO COMMIT THE VIOLATION; AND (B) DOCUMENTS THAT AN EMPLOYEE TRAINING PROGRAM WAS IN PLACE TO PROVIDE THE EMPLOYEE OR AGENT WITH INFORMATION ON THE STATE AND FEDERAL LAWS AND REGULATIONS REGARDING METHAMPHETAMINE PRECURSOR DRUGS.

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

12. THIS SECTION DOES NOT APPLY TO: (A) METHAMPHETAMINE PRECURSOR DRUGS CERTIFIED BY THE STATE BOARD OF PHARMACY AS BEING MANUFACTURED IN A MANNER THAT PREVENTS THE DRUG FROM BEING USED TO MANUFACTURE METHAMPHETAMINE; OR (B) METHAMPHETAMINE PRECURSOR DRUGS OBTAINED PURSUANT TO A VALID PRESCRIPTION.

13. THE STATE BOARD OF PHARMACY, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SAFETY, SHALL CERTIFY METHAMPHETAMINE PRECURSOR DRUGS THAT MEET THE REQUIREMENTS OF PARAGRAPH (B) OF SUBDIVISION TWELVE OF THIS SECTION AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.
14. WHOLESALE DRUG DISTRIBUTORS LICENSED AND REGULATED BY THE STATE
BOARD OF PHARMACY AND REGISTERED WITH AND REGULATED BY THE UNITED STATES
DRUG ENFORCEMENT ADMINISTRATION ARE EXEMPT FROM THE METHAMPHETAMINE
PRECURSOR DRUG STORAGE REQUIREMENTS OF THIS SECTION.

15. THIS SECTION PREEMPTS ALL LOCAL ORDINANCES OR REGULATIONS GOVERNING THE SALE BY A BUSINESS ESTABLISHMENT OF PRODUCTS CONTAINING EphEDRINE OR PSEUDOEPHEDRINE. ALL ORDINANCES ENACTED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION ARE VOID.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.