

4652--A

2013-2014 Regular Sessions

I N S E N A T E

April 17, 2013

Introduced by Sens. VALESKY, DeFRANCISCO, GRIFFO, LIBOUS, O'MARA, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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 section
2 391-oo to read as follows:
3 S 391-00. SALE OF METHAMPHETAMINE PRECURSOR DRUGS. 1. FOR THE PURPOSES
4 OF THIS SECTION:
5 (A) "METHAMPHETAMINE PRECURSOR DRUG" SHALL MEAN ANY COMPOUND, MIXTURE,
6 OR PREPARATION CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE AS ITS SOLE
7 ACTIVE INGREDIENT OR AS ONE OF ITS ACTIVE INGREDIENTS; AND
8 (B) "REAL-TIME STOP SALE SYSTEM" MEANS A SYSTEM INTENDED TO BE USED BY
9 LAW ENFORCEMENT AGENCIES AND PHARMACIES OR OTHER BUSINESS ESTABLISHMENTS
10 THAT:
11 (A) IS INSTALLED, OPERATED, AND MAINTAINED FREE OF ANY ONE-TIME OR
12 RECURRING CHARGE TO THE BUSINESS ESTABLISHMENT OR TO THE STATE;
13 (B) IS ABLE TO COMMUNICATE IN REAL TIME WITH SIMILAR SYSTEMS OPERATED
14 IN OTHER STATES AND SIMILAR SYSTEMS CONTAINING INFORMATION SUBMITTED BY
15 MORE THAN ONE STATE;
16 (C) COMPLIES WITH THE SECURITY POLICY OF THE CRIMINAL JUSTICE INFORMA-
17 TION SERVICES DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION;
18 (D) COMPLIES WITH INFORMATION EXCHANGE STANDARDS ADOPTED BY THE
19 NATIONAL INFORMATION EXCHANGE MODEL;
20 (E) USES A MECHANISM TO PREVENT THE COMPLETION OF A SALE OF A PRODUCT
21 CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, OR NON-PSEUDOEPHEDRINE THAT WOULD

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

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1 VIOLATE STATE OR FEDERAL LAW REGARDING THE PURCHASE OF A PRODUCT
2 CONTAINING THOSE SUBSTANCES; AND

3 (F) IS EQUIPPED WITH AN OVERRIDE OF THE MECHANISM THAT:

4 (I) MAY BE ACTIVATED BY AN EMPLOYEE OF A BUSINESS ESTABLISHMENT; AND

5 (II) CREATES A RECORD OF EACH ACTIVATION OF THE OVERRIDE.

6 2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
7 LIABILITY COMPANY, OR OTHER ENTITY SHALL SELL TO THE SAME PERSON, AND A
8 PERSON SHALL NOT PURCHASE, PRODUCTS CONTAINING MORE THAN THREE AND SIX
9 TENTHS GRAMS PER DAY OR MORE THAN NINE GRAMS PER THIRTY DAY PERIOD OF
10 EPHEDRINE OR PSEUDOEPHEDRINE BASE, OR THEIR ISOMERS. THE LIMITS SHALL
11 APPLY TO THE TOTAL AMOUNT OF EPHEDRINE AND PSEUDOEPHEDRINE CONTAINED IN
12 THE PRODUCTS, AND NOT THE OVERALL WEIGHT OF THE PRODUCTS.

13 3. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
14 LIABILITY COMPANY, OR OTHER ENTITY THAT OFFERS FOR SALE METHAMPHETAMINE
15 PRECURSOR DRUGS IN AN OVER-THE-COUNTER SALE SHALL ENSURE THAT ALL PACK-
16 AGES OF THE DRUGS ARE DISPLAYED BEHIND A CHECKOUT COUNTER OR IN A LOCKED
17 CASE WHERE THE PUBLIC IS NOT PERMITTED. SUCH PERSON, FIRM, CORPORATION,
18 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY
19 SHALL:

20 (A) REQUIRE ANY PERSON PURCHASING A NONPRESCRIPTION PRODUCT THAT
21 CONTAINS PSEUDOEPHEDRINE OR EPHEDRINE TO PRESENT VALID GOVERNMENT ISSUED
22 PHOTO IDENTIFICATION AT THE POINT OF SALE.

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

27 4. A PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
28 LIABILITY COMPANY, OR OTHER ENTITY SHALL, BEFORE COMPLETING A SALE UNDER
29 THIS SECTION, ELECTRONICALLY SUBMIT THE REQUIRED INFORMATION TO THE
30 REAL-TIME STOP SALE SYSTEM ADMINISTERED BY THE DIVISION OF STATE POLICE;
31 PROVIDED THAT THE SYSTEM IS AVAILABLE WITHOUT A CHARGE TO RETAILERS FOR
32 ACCESS. ABSENT NEGLIGENCE, WANTONNESS, RECKLESSNESS, OR DELIBERATE
33 MISCONDUCT, ANY RETAILER UTILIZING THE ELECTRONIC SALES TRACKING SYSTEM
34 IN ACCORDANCE WITH THIS SUBDIVISION SHALL NOT BE CIVILLY LIABLE AS A
35 RESULT OF ANY ACT OR OMISSION IN CARRYING OUT THE DUTIES REQUIRED BY
36 THIS SECTION AND SHALL BE IMMUNE FROM LIABILITY TO ANY THIRD PARTY
37 UNLESS THE RETAILER HAS VIOLATED ANY PROVISION OF THIS SECTION IN
38 RELATION TO A CLAIM BROUGHT FOR SUCH VIOLATION.

39 (A) IF A PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
40 LIABILITY COMPANY, OR OTHER ENTITY SELLING A NONPRESCRIPTION PRODUCT
41 CONTAINING PSEUDOEPHEDRINE OR EPHEDRINE EXPERIENCES MECHANICAL OR ELEC-
42 TRONIC FAILURE OF THE ELECTRONIC SALES TRACKING SYSTEM AND IS UNABLE TO
43 COMPLY WITH THE ELECTRONIC SALES TRACKING REQUIREMENT, THE RETAILER
44 SHALL MAINTAIN A WRITTEN LOG OR AN ALTERNATIVE ELECTRONIC RECORDKEEPING
45 MECHANISM UNTIL SUCH TIME AS THE RETAILER IS ABLE TO COMPLY WITH THE
46 ELECTRONIC SALES TRACKING REQUIREMENT.

47 (B) THE REAL-TIME STOP SALE SYSTEM SHALL FORWARD STATE TRANSACTION
48 RECORDS IN THE REAL-TIME STOP SALE SYSTEM TO THE APPROPRIATE STATE AGEN-
49 CY WEEKLY, AND PROVIDE REAL-TIME ACCESS TO THE REAL-TIME STOP SALE
50 SYSTEM INFORMATION THROUGH THE SYSTEM'S ONLINE PORTAL TO LAW ENFORCEMENT
51 IN THE STATE AS AUTHORIZED BY THE AGENCY.

52 (C) THIS SYSTEM SHALL BE CAPABLE OF GENERATING A STOP SALE ALERT,
53 WHICH SHALL BE A NOTIFICATION THAT COMPLETION OF THE SALE WOULD RESULT
54 IN THE SELLER OR PURCHASER VIOLATING THE QUANTITY LIMITS SET FORTH IN
55 THIS SECTION. THE SELLER SHALL NOT COMPLETE THE SALE IF THE SYSTEM
56 GENERATES A STOP SALE ALERT. THE SYSTEM SHALL CONTAIN AN OVERRIDE FUNC-

1 TION THAT MAY BE USED BY A DISPENSER OF EPHEDRINE OR PSEUDOEPHEDRINE WHO
2 HAS A REASONABLE FEAR OF IMMINENT BODILY HARM IF THEY DO NOT COMPLETE A
3 SALE. EACH INSTANCE IN WHICH THE OVERRIDE FUNCTION IS UTILIZED SHALL BE
4 LOGGED BY THE SYSTEM.

5 5. A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS A MISDEMEA-
6 NOR, PUNISHABLE BY FINE ONLY.

7 (A) THIS SECTION DOES NOT APPLY TO A PERSON WHO OBTAINS THE PRODUCT
8 PURSUANT TO A VALID PRESCRIPTION.

9 (B) NOTHING IN THIS SECTION REQUIRES THE BUYER TO OBTAIN A
10 PRESCRIPTION FOR THE PURCHASE OF ANY METHAMPHETAMINE PRECURSOR DRUG.

11 6. ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED
12 LIABILITY COMPANY, OR OTHER ENTITY WHO KNOWINGLY VIOLATES SUBDIVISION
13 TWO, THREE, FOUR OR FIVE OF THIS SECTION SHALL, FOR THE FIRST SUCH
14 VIOLATION, BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN TWO HUNDRED
15 FIFTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS PER VIOLATION, RECOVER-
16 ABLE IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICI-
17 PALITY OR POLITICAL SUBDIVISION.

18 7. AN OWNER, OPERATOR, SUPERVISOR, OR MANAGER OF ANY BUSINESS ENTITY
19 THAT OFFERS FOR SALE METHAMPHETAMINE PRECURSOR DRUGS WHOSE EMPLOYEE OR
20 AGENT IS CONVICTED OF OR CHARGED WITH VIOLATING SUBDIVISION TWO, THREE,
21 FOUR OR FIVE OF THIS SECTION IS NOT SUBJECT TO THE CIVIL PENALTIES OR
22 CRIMINAL PENALTIES FOR VIOLATING ANY OF SUCH SUBDIVISIONS IF THE PERSON:

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

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

28 8. THIS SECTION DOES NOT APPLY TO:

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

32 (B) METHAMPHETAMINE PRECURSOR DRUGS OBTAINED PURSUANT TO A VALID
33 PRESCRIPTION.

34 9. THE STATE BOARD OF PHARMACY, IN CONSULTATION WITH THE DIVISION OF
35 STATE POLICE, SHALL CERTIFY METHAMPHETAMINE PRECURSOR DRUGS THAT MEET
36 THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION EIGHT OF THIS SECTION
37 AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.

38 10. THIS SECTION PREEMPTS ALL LOCAL ORDINANCES OR REGULATIONS GOVERN-
39 ING THE SALE BY A BUSINESS ESTABLISHMENT OF PRODUCTS CONTAINING EPHE-
40 DRINE OR PSEUDOEPHEDRINE. ALL ORDINANCES ENACTED PRIOR TO THE EFFECTIVE
41 DATE OF THIS SECTION ARE VOID.

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