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:

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.
(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 PAPER OR ELECTRONIC LOGBOOK.

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 ON THE ONE HUNDRED TWENTIETH DAY AFTER THIS SECTION
SHALL HAVE BECOME A LAW, 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). 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 OMISSION 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.

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

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

8. 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 OR FIVE OF THIS SECTION IS NOT SUBJECT TO THE CIVIL PENALTIES OR
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.

9. 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.

10. 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 NINE OF THIS
SECTION AND PUBLISH AN ANNUAL LISTING OF SUCH DRUGS.

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

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