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

1359--C

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CYMBROWITZ, MAGEE, BRINDISI, GUNTHER, McDONALD, RUSSELL -- Multi-Sponsored by -- M. of A. LUPARDO -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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:

(A) "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; AND

(B) "REAL-TIME STOP SALE SYSTEM" MEANS A SYSTEM INTENDED TO BE USED BY LAW ENFORCEMENT AGENCIES AND PHARMACIES OR OTHER BUSINESS ESTABLISHMENTS THAT:

(A) IS INSTALLED, OPERATED, AND MAINTAINED FREE OF ANY ONE-TIME OR RECURRING CHARGE TO THE BUSINESS ESTABLISHMENT OR TO THE STATE;

(B) IS ABLE TO COMMUNICATE IN REAL TIME WITH SIMILAR SYSTEMS OPERATED IN OTHER STATES AND SIMILAR SYSTEMS CONTAINING INFORMATION SUBMITTED BY MORE THAN ONE STATE;

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

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(C) COMPLIES WITH THE SECURITY POLICY OF THE CRIMINAL JUSTICE INFORMATION SERVICES DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION;

(D) COMPLIES WITH INFORMATION EXCHANGE STANDARDS ADOPTED BY THE NATIONAL INFORMATION EXCHANGE MODEL;

(E) USES A MECHANISM TO PREVENT THE COMPLETION OF A SALE OF A PRODUCT CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, OR NON-PSEUDOEPHEDRINE THAT WOULD VIOLATE STATE OR FEDERAL LAW REGARDING THE PURCHASE OF A PRODUCT CONTAINING THOSE SUBSTANCES; AND

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

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

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

2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SHALL SELL TO THE SAME PERSON, AND A PERSON SHALL NOT PURCHASE, PRODUCTS CONTAINING MORE THAN THREE AND SIX TENTHS GRAMS PER DAY OR MORE THAN NINE GRAMS PER THIRTY DAY PERIOD OF EPHEDRINE OR PSEUDOEPHEDRINE BASE, OR THEIR ISOMERS. THE LIMITS SHALL APPLY TO THE TOTAL AMOUNT OF 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) REQUIRE ANY PERSON PURCHASING A NONPRESCRIPTION PRODUCT THAT CONTAINS PSEUDOEPHEDRINE OR EPHEDRINE TO PRESENT VALID GOVERNMENT ISSUED PHOTO IDENTIFICATION AT THE POINT OF SALE.

(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 PURCHASER'S SIGNATURE IN A ELECTRONIC OR PAPER LOGBOOK.

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

(A) IF A PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY SELLING A NONPRESCRIPTION PRODUCT CONTAINING PSEUDOEPHEDRINE OR EPHEDRINE EXPERIENCES MECHANICAL OR ELECTRONIC FAILURE OF THE ELECTRONIC SALES TRACKING SYSTEM OR IS OTHERWISE 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) THE REAL-TIME STOP SALE SYSTEM SHALL FORWARD STATE TRANSACTION RECORDS IN THE REAL-TIME STOP SALE SYSTEM TO THE APPROPRIATE STATE AGENCY WEEKLY, AND PROVIDE REAL-TIME ACCESS TO THE REAL-TIME STOP SALE

SYSTEM INFORMATION THROUGH THE SYSTEM'S 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 SELLER OR PURCHASER VIOLATING THE QUANTITY LIMITS SET FORTH IN THIS SECTION. THE SELLER SHALL NOT COMPLETE THE SALE IF THE SYSTEM GENERATES A STOP SALE ALERT. THE SYSTEM SHALL CONTAIN AN OVERRIDE FUNCTION 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.

5. A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS A MISDEMEANOR, PUNISHABLE BY FINE ONLY.

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

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

6. 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, RECOVERABLE IN AN ACTION BY ANY ENFORCEMENT AUTHORITY DESIGNATED BY ANY MUNICIPALITY OR POLITICAL SUBDIVISION.

7. 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.

8. 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.

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

10. 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 eightieth 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.