

1 **S** SENATE BILL NO. 287
 2 INTRODUCED BY SCHMIDT, ARNTZEN, BARKUS, BECKER, BERGREN, BLACK, BRANAE, COBB,
 3 COCCHIARELLA, DICKENSON, DOWELL, ESP, FRANKLIN, GALLIK, GALLUS, GALVIN-HALCRO,
 4 GEBHARDT, GILLAN, GOLIE, GRIMES, HAMILTON, HENRY, JENT, KAUFMANN, KEANE, KITZENBERG,
 5 LAIBLE, LENHART, LIND, MANGAN, MOSS, PARKER, PEASE, RASER, ROUSH, RYAN, SHOCKLEY,
 6 SMITH, STORY, TASH, TESTER, TOOLE, TROPILA, WANZENRIED, WEINBERG, WILLIAMS, WILSON,
 7 WINDY BOY, WISEMAN, WITT, SMALL-EASTMAN

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE REGULATION OF EPHEDRINE AND
 10 PSEUDOEPHEDRINE; PROVIDING THAT PRODUCTS CONTAINING AN INGREDIENT OF EPHEDRINE OR
 11 PSEUDOEPHEDRINE MUST BE SOLD IN A LICENSED PHARMACY OR A RETAIL ESTABLISHMENT UNDER
 12 RESTRICTED CONDITIONS AND IN LIMITED QUANTITIES; PROVIDING A REBUTTABLE PRESUMPTION
 13 AND PENALTIES; PROVIDING FOR A VOLUNTARY RETAILER METHAMPHETAMINE WATCH PROGRAM;
 14 REQUIRING THE DEPARTMENT OF ~~PUBLIC HEALTH AND HUMAN SERVICES~~ JUSTICE TO PROVIDE
 15 GRANTS; ~~AND~~ PROVIDING IMMUNITY FOR A PERSON REPORTING UNDER THE METHAMPHETAMINE
 16 WATCH PROGRAM; AND PROVIDING AN EFFECTIVE DATE."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
 20 NEW SECTION. **Section 1. Restricted possession, purchase, or other transfer of ephedrine or**
 21 **pseudoephedrine -- exceptions -- penalties.** (1) Except as provided in subsection (2), a person may not
 22 purchase, receive, or otherwise acquire more than 9 grams of any product, mixture, or preparation containing
 23 any detectable quantity of ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of optical
 24 isomers within any 30-day period.

25 (2) This section does not apply to any quantity of a product, mixture, or preparation dispensed pursuant
 26 to a valid prescription or as provided in [section 2].

27 (3) Possession of MORE THAN 9 GRAMS OF a drug product containing ~~more than 9 grams~~ ANY DETECTABLE
 28 QUANTITY of ephedrine, pseudoephedrine, their salts or optical isomers, or salts of optical isomers constitutes
 29 a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another
 30 controlled substance.

1 (4) The rebuttable presumption in subsection (3) does not apply to:
 2 (a) a retail distributor of drug products;
 3 (b) a wholesale drug distributor, or its agents, licensed by the board of pharmacy;
 4 (c) a manufacturer of drug products or its agents;
 5 (d) a pharmacist licensed by the board of pharmacy; or
 6 (e) a licensed health care professional possessing the drug products in the course of carrying out the
 7 profession.

8 (5) A person who knowingly or negligently violates any provision of this section is guilty of a
 9 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in
 10 the county jail for not more than 1 year.

11
 12 **NEW SECTION. Section 2. Restricted sale and access to ephedrine or pseudoephedrine**
 13 **products -- exceptions -- penalties.** (1) The retail sale of a product that contains any detectable quantity of
 14 ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers may be sold only in a
 15 ~~business establishment that operates a~~ pharmacy licensed pursuant to Title 37, chapter 7, OR A RETAIL
 16 ESTABLISHMENT THAT IS AT LEAST 5,000 SQUARE FEET IN SIZE AND OFFERS AT LEAST 1,000 STOCK KEEPING UNITS
 17 CERTIFIED BY THE DEPARTMENT OF JUSTICE PURSUANT TO SUBSECTION (2).

18 (2) (A) IF THERE IS NOT A LICENSED COMMUNITY PHARMACY WITHIN A COUNTY, THEN A RETAIL ESTABLISHMENT
 19 MAY APPLY TO THE DEPARTMENT OF JUSTICE FOR CERTIFICATION AS AN ESTABLISHMENT THAT IS ALLOWED TO SELL
 20 PRODUCTS THAT CONTAIN ANY DETECTABLE QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE, THEIR SALTS OR OPTICAL
 21 ISOMERS, OR SALTS OF OPTICAL ISOMERS.

22 (B) THE DEPARTMENT OF JUSTICE SHALL ADOPT RULES TO ESTABLISH CRITERIA FOR THE CERTIFICATION OF
 23 RETAIL ESTABLISHMENTS WITH THE INTENT TO LIMIT THE AVAILABLE SUPPLY OF EPHEDRINE AND PSEUDOEPHEDRINE TO
 24 PREVENT THE MANUFACTURE OF METHAMPHETAMINE.

25 (C) THE DEPARTMENT OF JUSTICE MAY CERTIFY A RETAIL ESTABLISHMENT BASED ON THE CRITERIA ADOPTED
 26 BY RULE.

27 ~~(2)(3)~~ Except as provided in subsection ~~(4)~~ (5), a ~~business establishment~~ LICENSED PHARMACY OR
 28 CERTIFIED RETAIL ESTABLISHMENT PROVIDED FOR IN SUBSECTION (1) that dispenses, sells, or distributes products
 29 containing ephedrine or pseudoephedrine shall:

30 (a) display the products containing ephedrine or pseudoephedrine ~~in a manner that makes the products~~

1 ~~accessible to a patron of the business establishment~~ LICENSED PHARMACY ~~only with the assistance of an~~
 2 ~~employee of the establishment~~ LICENSED PHARMACY BEHIND THE STORE COUNTER IN AN AREA THAT IS NOT ACCESSIBLE
 3 TO CUSTOMERS OR IN A LOCKED CASE SO THAT A CUSTOMER IS REQUIRED TO ASK AN EMPLOYEE OF THE LICENSED
 4 PHARMACY OR CERTIFIED RETAIL ESTABLISHMENT FOR ASSISTANCE IN PURCHASING THE PRODUCT;

5 (b) limit sales to packages containing no more than a total of 9 grams;

6 (c) require the person purchasing, receiving, or otherwise acquiring any product, mixture, or preparation
 7 containing ephedrine or pseudoephedrine to produce a driver's license or other form of photo identification and
 8 sign a record of sale or acquisition that includes the date of the transaction, the name of the person purchasing
 9 or acquiring the ephedrine or pseudoephedrine, and the number of grams of the product, mixture, or preparation
 10 purchased or acquired;

11 (d) take action as necessary to ensure that a person does not purchase or acquire more than 9 grams
 12 of ephedrine or pseudoephedrine from the ~~establishment~~ LICENSED PHARMACY OR CERTIFIED RETAIL ESTABLISHMENT
 13 PROVIDED FOR IN SUBSECTION (1) in any 30-day period.

14 ~~(3)(4)~~ A business establishment LICENSED PHARMACY OR CERTIFIED RETAIL ESTABLISHMENT PROVIDED FOR
 15 IN SUBSECTION (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall
 16 maintain all records made under subsection ~~(2)~~ (3) in a secure, centralized location. Each record must be
 17 maintained by the ~~establishment~~ LICENSED PHARMACY OR CERTIFIED RETAIL ESTABLISHMENT PROVIDED FOR IN
 18 SUBSECTION (1) for 2 years. The ~~establishment~~ LICENSED PHARMACY OR CERTIFIED RETAIL ESTABLISHMENT PROVIDED
 19 FOR IN SUBSECTION (1) shall provide access to sales records by law enforcement officials.

20 ~~(4)(5)~~ This section does not apply to:

21 (a) any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription;

22 (b) products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule
 23 form if ephedrine or pseudoephedrine is not the only active ingredient;

24 (c) a product that the board, upon application by a manufacturer, exempts from this section by rule
 25 because the product has been formulated in a manner as to effectively prevent the conversion of the active
 26 ingredient into methamphetamine or its salts or precursors.

27 ~~(5)(6)~~ A person who knowingly or negligently violates any provision of this section is guilty of a
 28 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in
 29 the county jail for not more than 1 year.

30

1 **NEW SECTION. Section 3. Definitions.** For the purposes of [sections 3 through 7], the following
 2 definitions apply:

3 (1) "Department" means the department of ~~public health and human services~~ JUSTICE provided for in
 4 ~~2-15-2204~~ 2-15-2001.

5 (2) "Program" means the methamphetamine watch program established under [sections 3 through 7].

6 (3) "Retailer" means a business establishment in this state that engages in over-the-counter retail sales
 7 of any product containing ephedrine or pseudoephedrine or a precursor to methamphetamine.

8
 9 **NEW SECTION. Section 4. Establishment of methamphetamine watch program.** The department
 10 shall establish a methamphetamine watch program to:

11 (1) inform retailers of the problems associated with the illicit manufacture and use of methamphetamine
 12 in this state;

13 (2) establish procedures and develop forms for retailers and other persons to use in reporting to law
 14 enforcement any incidents of theft, suspicious purchases, or other transactions involving products that may be
 15 used in the illicit manufacture of methamphetamine;

16 (3) increase community awareness of methamphetamine;

17 (4) encourage retailers, law enforcement, state and local agencies, and other persons to cooperate in
 18 efforts to reduce the diversion of legitimate products for use in the illicit manufacture of methamphetamine; and

19 (5) assist local communities in addressing problems created by the illicit manufacture and use of
 20 methamphetamine.

21
 22 **NEW SECTION. Section 5. Retailer participation.** (1) Retailer participation in the program is
 23 voluntary.

24 (2) A retailer participating in the program shall make reasonable efforts to deter the theft or improper
 25 sale of products used in the illicit manufacture of methamphetamine, including products containing ephedrine
 26 and pseudoephedrine, by:

27 (a) implementing product management practices that deter theft or suspicious purchases of the
 28 products, including placing signs at strategic locations within the retail establishment to inform patrons of the
 29 retailer's participation in the program; and

30 (b) providing annual personnel training on products used in the illicit manufacture of methamphetamine

1 and procedures to follow on observing theft or suspicious purchases of those products.

2

3 NEW SECTION. Section 6. Grants. (1) The department shall provide grants for public and private
4 organizations to engage in initiatives designed to support the program. The grant recipient may use grant money
5 only to pay for activities directly related to the purpose of the initiative to support the program.

6 (2) The department may accept gifts, grants, donations, and other contributions for the purpose of
7 providing grants.

8

9 NEW SECTION. Section 7. Reporting -- immunity from liability. A person may not be held liable for
10 any damages arising from an act relating to the reporting of information made in good faith and in substantial
11 compliance with the reporting procedures established under [section 4].

12

13 NEW SECTION. Section 8. Codification instruction. (1) [Sections 1 and 2] are intended to be
14 codified as an integral part of Title 50, chapter 32, and the provisions of Title 50, chapter 32, apply to [sections
15 1 and 2].

16 (2) [Sections 3 through 7] are intended to be codified as an integral part of ~~Title 50, chapter 31, part 5,~~
17 TITLE 44, CHAPTER 4, and the provisions of ~~Title 50, chapter 31, part 5, TITLE 44, CHAPTER 4,~~ apply to [sections
18 3 through 7].

19

20 NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2005.

21

22 ~~NEW SECTION. SECTION 10. CONTINGENT VOIDNESS. IF FUNDS ARE NOT APPROPRIATED FOR THE PURPOSES~~
23 ~~OF [SECTION 6], THEN [THIS ACT] IS VOID.~~

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