SENATE
PUBLIC HEALTH, WELFARE & SAFETY
Exhibit No. 2
Date 2/13/2015
Bill No. SB 48

Amendments to Senate Bill No. 48
1st Reading Copy

Requested by Senator Fred Thomas

For the Senate Public Health, Welfare and Safety Committee

Prepared by Alexis Sandru
February 12, 2015 (2:39pm)

1. Title, page 1, line 6.
**Following:** "SALES;"
**Insert:** "PROVIDING FOR THE ESTABLISHMENT OF AND PARTICIPATION IN AN ELECTRONIC RECORDKEEPING AND MONITORING SYSTEM; PROVIDING IMMUNITY;
**Strike:** "SECTION"
**Insert:** "SECTIONS 50-32-501 AND"

2. Page 1, line 9.
**Strike:** everything after the enacting clause
**Insert:** "**Section 1.** Section 50-32-501, MCA, is amended to read:

"**50-32-501. Restricted possession, purchase, or other transfer of ephedrine or pseudoephedrine -- exceptions -- penalties.** (1) Except as provided in subsection (2), a person may not purchase, receive, or otherwise acquire more than 9 grams within any 30-day period or more than 3 grams per day of any product, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of their optical isomers ~~within any 30-day period~~.

(2) This section does not apply to any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription or as provided in 50-32-502.

(3) Possession of more than 9 grams of a drug product containing any detectable quantity of ephedrine, pseudoephedrine, their salts or optical isomers, or salts of optical isomers constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance.

(4) The rebuttable presumption in subsection (3) does not apply to:

(a) a retail distributor of drug products;

(b) a wholesale drug distributor, or its agents, licensed by the board of pharmacy;

(c) a manufacturer of drug products or its agents;

(d) a pharmacist licensed by the board of pharmacy; or

(e) a licensed health care professional possessing the drug products in the course of carrying out the profession.

(5) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be

punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 1 year."
{*Internal References to 50-32-501: None.*}"

**Insert: "Section 2.** Section 50-32-502, MCA, is amended to read:

**"50-32-502. Restricted sale and access to ephedrine or pseudoephedrine products -- exceptions -- penalties.** (1) The retail sale of a product that contains any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers may be made only in a pharmacy licensed pursuant to Title 37, chapter 7, or a retail establishment that is certified by the department of justice pursuant to subsection (2).

(2) (a) If there is not a licensed community pharmacy within a county, then a retail establishment may apply to the department of justice for certification as an establishment that is allowed to sell products that contain any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(b) The department of justice shall adopt rules to establish criteria for the certification of retail establishments with the intent to limit the available supply of ephedrine and pseudoephedrine to prevent the manufacture of methamphetamine.

(c) The department of justice may certify a retail establishment based on the criteria adopted by rule.

(3) Except as provided in subsection (5), a licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall:

(a) display the products containing ephedrine or pseudoephedrine behind the store counter in an area that is not accessible to customers or in a locked case so that a customer is required to ask an employee of the licensed pharmacy or certified retail establishment for assistance in purchasing the product;

(b) limit sales to packages containing no more than a total of ~~9 grams~~ 3 grams base weight;

(c) require the person purchasing, receiving, or otherwise acquiring any product, mixture, or preparation containing ephedrine or pseudoephedrine to produce a valid driver's license or other form of valid government-issued photo identification and sign a record of sale or acquisition that includes the type of identification presented, including the identification number and issuing governmental entity, the time and date of the transaction, the name and address of the person purchasing or acquiring the ephedrine or pseudoephedrine, and the ~~number of grams of the product, mixture, or preparation purchased or acquired~~ name of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product;

(d) require the purchaser to sign the record of sale or acquisition, acknowledging:

(i) that the record may be kept in written or electronic

form;

(ii) an understanding of the applicable sales limit;

(iii) that providing false statements or misrepresentations may subject the purchaser to criminal penalties under 18 U.S.C. 1001; and

~~(d)~~(e) take action as necessary to ensure that a person does not purchase or acquire more than ~~9 grams~~ 3 grams per day of ephedrine or pseudoephedrine from the licensed pharmacy or certified retail establishment provided for in subsection (1) or more than 9 grams in any 30-day period. The limits apply to the total amount of base ephedrine or pseudoephedrine contained in the products and not to the overall weight of the products.

(4) A licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall maintain all records made under subsection (3) ~~in a secure, centralized location~~ and enter the records into the recordkeeping and monitoring system provided for in [section 3]. Each record must be maintained by the licensed pharmacy or certified retail establishment provided for in subsection (1) for 2 years. ~~The licensed pharmacy or certified retail establishment provided for in subsection (1) shall provide access to sales records by law enforcement officials.~~

(5) This section does not apply to:

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

(b) ~~products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient~~ the sale of a single package containing no more than 60 milligrams of ephedrine or pseudoephedrine to an individual;

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

(d) any product or precursor dispensed pursuant to a prescription.

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

(7) This section supersedes and preempts any rule, regulation, code, or ordinance of any political subdivision or other unit of local government that attempts to regulate the sale or purchase of compounds, mixtures, or preparations containing any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers."

{ *Internal References to 50-32-502: 50-32-501a* }"

**Insert:** "NEW SECTION. **Section 3. Electronic recordkeeping and**

**monitoring system.** (1) The department of justice shall provide for the state's participation in a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or pseudoephedrine. The system must:

(a) be approved by the department of justice and provided at no charge to the state, law enforcement, or participating pharmacies and certified retail establishments;

(b) provide at no charge to participating pharmacies and certified retail establishments appropriate training, 24-hour online support, and a toll-free telephone help line that is staffed 24 hours a day;

(c) be able to communicate in real time with similar systems operated in other states and the District of Columbia and similar systems containing information submitted by more than one state;

(d) comply with information exchange standards adopted by the national information exchange model;

(e) include a stop sales alert that:

(i) provides notification that completion of a sale would result in the purchaser violating the quantity limits set forth in this part;

(ii) includes an override function that may be used by a pharmacy or certified retail establishment under the circumstances set forth in subsection (2); and

(iii) records each instance in which the override function is utilized;

(f) record the following:

(i) the date and time of a transaction;

(ii) the name, address, date of birth, and photo identification number of the purchaser, the type of identification used, and the issuing governmental entity;

(iii) the number of packages purchased, the total number of grams of ephedrine or pseudoephedrine per package, and the name of the compound, mixture, or preparation containing ephedrine or pseudoephedrine; and

(iv) the signature of the purchaser or a unique number connecting the transaction to a paper signature retained at the retail premises;

(g) ensure that submitted data is retained within the system for at least 2 years from the date of submission; and

(h) be accessible by law enforcement.

(2) (a) A pharmacy or certified retail establishment may not complete a sale if the system generates a stop sales alert unless the individual dispensing the ephedrine, pseudoephedrine, or related compound has a reasonable fear of imminent bodily harm if the sale is not completed.

(b) In the event of a mechanical or electronic interruption of the system, the pharmacy or certified retail establishment shall maintain a written log of sales of ephedrine and pseudoephedrine until the system is restored. The information written in the log must be transmitted to the system as soon as practicable after the system is restored.

(3) The following entities may not be required to participate in the electronic system and may not be required to maintain a written log:

(a) licensed manufacturers that manufacture and lawfully distribute products in the channels of commerce;

(b) wholesalers that lawfully distribute products in the channels of commerce;

(c) inpatient pharmacies of health care facilities licensed in this state;

(d) licensed long-term health care facilities;

(e) government-operated health care clinics, departments, or centers;

(f) physicians who dispense drugs pursuant to state law;

(g) pharmacies located in correctional facilities; and

(h) government-operated or industry-operated medical facilities serving the employees of the state or local or federal government.

(4) The department of justice, a law enforcement agency of the state, or a federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data, records, and reports regarding the sale of ephedrine or pseudophedrine. In addition, the information may be accessed if relevant to proceedings in a court, investigatory grand jury, or special grand jury.

(5) All data, records, and reports related to the sale of ephedrine or pseudoephedrine to retail customers and any abstracts of the data, records, and reports that are in the possession of the department of justice pursuant to this section are confidential and exempt from disclosure under Title 2, chapter 6.

(6) An entity operating the system or a pharmacy or certified retail establishment that sells a product containing ephedrine or pseudoephedrine may not use or disclose information collected or contained in the system or a written log for any purpose other than to:

(a) ensure compliance with this section or the federal Combat Methamphetamine Epidemic Act of 2005, Public Law 109-177;

(b) comply with the United States government or its political subdivision for law enforcement purposes under state or federal law; or

(c) facilitate a product recall necessary to protect the public health and safety.

(7) (a) A pharmacy or certified retail establishment that releases in good faith confidential information to federal, state, or local law enforcement or to a person acting on the behalf of law enforcement or that utilizes the system in accordance with this section is immune from civil liability for the release of the information or for acts or omissions in utilizing the system under this section unless the release or the act or omission constitutes gross negligence or intentional,

wanton, or willful misconduct.

(b) The civil immunity provisions of subsection (7)(a) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state."

**Insert:** "NEW SECTION. **Section 4. {standard} Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 50, chapter 32, part 5, and the provisions of Title 50, chapter 32, part 5, apply to [section 3]."

**Insert:** "NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective January 1, 2016."

- END -