

SENATE BILL NO. 48

INTRODUCED BY C. VINCENT

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ELECTRONIC REPORTING OF EPHEDRINE OR PSEUDOEPHEDRINE SALES; PROVIDING FOR THE ESTABLISHMENT OF AND PARTICIPATION IN AN ELECTRONIC RECORDKEEPING AND MONITORING SYSTEM; PROVIDING IMMUNITY; AMENDING SECTION SECTIONS 50-32-501 AND 50-32-502, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and 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 3.6 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; or pseudoephedrine, their salts or optical isomers, or salts of their 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

1 profession.

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

5

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

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

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

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

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

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

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

25 (b) limit sales to packages containing no more than a total of ~~9 grams~~ 3.6 grams base weight;

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

1 pseudoephedrine, and the number of grams of the product, mixture, or preparation purchased or acquired name
 2 of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product;

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

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

5 (ii) an understanding of the applicable sales limit; and

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

8 ~~(d)~~(e) take action as necessary to ensure that a person does not purchase or acquire more than 9 grams
 9 3.6 grams per day of ephedrine or pseudoephedrine from the licensed pharmacy or certified retail establishment
 10 provided for in subsection (1) or more than 9 grams in any 30-day period. The limits apply to the total amount of
 11 base ephedrine or pseudoephedrine contained in the products and not to the overall weight of the products.

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

18 (5) This section does not apply to:

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

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

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

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

27 (6) (a) A person who negligently violates any provision of this section is punishable by a fine of not more
 28 than \$500.

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

1 for not more than ~~4-year~~ 10 days.

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

6
7 **NEW SECTION. Section 3. Electronic recordkeeping and monitoring system.** (1) The department
8 of justice shall provide for the state's participation in a real-time electronic recordkeeping and monitoring system
9 for the sale of ephedrine or pseudoephedrine. The system must:

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

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

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

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

17 (e) include a stop sales alert that:

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

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

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

23 (f) record the following:

24 (i) the date and time of a transaction;

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

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

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

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

3 (h) be accessible by law enforcement.

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

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

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

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

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

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

17 (d) licensed long-term health care facilities;

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

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

20 (g) pharmacies located in correctional facilities; and

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

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

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

30 (6) An entity operating the system or a pharmacy or certified retail establishment that sells a product

1 containing ephedrine or pseudoephedrine may not use or disclose information collected or contained in the
2 system or a written log for any purpose other than to:

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

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

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

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

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

15
16 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an
17 integral part of Title 50, chapter 32, part 5, and the provisions of Title 50, chapter 32, part 5, apply to [section 3].

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19 **NEW SECTION. Section 5. Effective date.** [This act] is effective January 1, 2016.

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