

ASSEMBLY BILL NO. 39—COMMITTEE  
ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Commerce and Labor

SUMMARY—Provides restrictions on the retail sale of certain products that are ephedrine and pseudoephedrine based. (BDR 54-218)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to pharmacy; making various changes concerning the sale, transfer or acquisition of certain products that are precursors to methamphetamine; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law prohibits any person, other than a pharmacy, from selling or
- 2 transferring in the course of business or selling at retail certain products that contain
- 3 materials that can be used to manufacture methamphetamine. (NRS 639.410)
- 4 Existing law further requires a retail distributor of such products to keep the
- 5 products in a locked case or cabinet or behind a store counter to prevent access to
- 6 the public. (NRS 453.354) Existing law also limits the quantity of certain chemicals
- 7 contained in these products that may be sold or transferred to the same person
- 8 during a calendar day. (NRS 453.355) **Section 6** of this bill establishes a limit on
- 9 the quantity of these chemicals that can be sold or transferred to the same person
- 10 during a 30-day period.
- 11 Existing law requires a retail distributor of certain products that can be used to
- 12 manufacture methamphetamine to maintain a logbook of the sales and transfers of
- 13 such a product and to ensure that certain information is entered in the logbook.
- 14 (NRS 453.357) **Section 2** of this bill requires the Director of the Department of
- 15 Public Safety to determine whether a real-time, stop sale system is available and
- 16 appropriate for use by pharmacies in this State to allow pharmacies to electronically
- 17 submit information before completing a sale or transfer of such a product to
- 18 determine whether the sale or transfer would violate any law. The Director is
- 19 authorized to approve such a system if it has certain capabilities and will be
- 20 available free of charge.



21 **Section 3** of this bill requires a pharmacy to use a real-time, stop sale system  
22 that is approved by the Director of the Department. A pharmacy is prohibited from  
23 completing a sale or transfer of a product if informed through the system that the  
24 sale or transfer will violate any law, except in certain circumstances. **Section 4** of  
25 this bill requires the Director of the Department to request transaction records from  
26 the real-time, stop sale system and forward such records to law enforcement  
27 agencies in this State. **Section 7** of this bill requires a retail distributor of certain  
28 products that can be used to manufacture methamphetamine, in addition to  
29 maintaining the logbook and checking the name and identification of a person  
30 seeking to obtain such a product, to consult with the real-time, stop sale system, if  
31 such a system is approved by the Director.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 639 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2. 1.** *The Director of the Department of Public Safety*  
4 *shall approve a real-time, stop sale system for use by pharmacies*  
5 *in this State if the Director determines that a real-time, stop sale*  
6 *system is available and appropriate for use by pharmacies in this*  
7 *State. The Director shall approve a real-time, stop sale system for*  
8 *use by pharmacies in this State only if the Director determines that*  
9 *the system:*

10 (a) *Will allow pharmacies in this State to electronically submit*  
11 *information to the system before the sale or transfer of a product*  
12 *that is a precursor to methamphetamine;*

13 (b) *Will determine whether the sale or transfer of the product*  
14 *would violate NRS 453.355 or any other law which prohibits the*  
15 *sale or transfer of a product that is a precursor to*  
16 *methamphetamine;*

17 (c) *Will send an alert to pharmacies to stop the sale or transfer*  
18 *of a product if the sale or transfer would violate NRS 453.355 or*  
19 *any other law which prohibits the sale or transfer of a product that*  
20 *is a precursor to methamphetamine; and*

21 (d) *Is available for use by pharmacies in this State free of*  
22 *charge.*

23 2. *Before approving a real-time, stop-sale system, the*  
24 *Director must adopt regulations establishing the minimum*  
25 *requirements for the real-time, stop sale system. The Director shall*  
26 *also adopt regulations establishing the requirements for use of the*  
27 *real-time, stop sale system by the pharmacies of this State.*

28 **Sec. 3. 1.** *After the Director of the Department of Public*  
29 *Safety has approved a real-time, stop sale system pursuant to*  
30 *section 2 of this act and adopted regulations establishing the*  
31 *requirements for the use of the system pursuant to that section, the*



1 *Director must notify the Board and each pharmacy in this State of*  
2 *the real-time, stop sale system that has been approved, the manner*  
3 *in which to establish the system in the pharmacy and the content*  
4 *of the regulations.*

5 *2. Once a pharmacy receives notification pursuant to*  
6 *subsection 1, the pharmacy shall obtain the real-time, stop sale*  
7 *system and consult the system in the manner prescribed before*  
8 *completing any sale or transfer of a product that is a precursor to*  
9 *methamphetamine, except when the purchaser has a valid*  
10 *prescription for such a product. The pharmacy shall obtain any*  
11 *information necessary from the person seeking the purchase or*  
12 *transfer of the product to receive notice from the real-time, stop*  
13 *sale system.*

14 *3. Except as otherwise provided in this subsection, if a*  
15 *pharmacy receives an alert from the real-time, stop sale system*  
16 *that the sale or transfer of a product may violate NRS 453.355 or*  
17 *any other law which prohibits the sale or transfer of a product that*  
18 *is a precursor to methamphetamine, the pharmacy must not allow*  
19 *the sale or transfer to be completed. The Department of Public*  
20 *Safety may provide by regulation for exceptions to allow for the*  
21 *completion of a sale or transfer despite such an alert when the*  
22 *pharmacist or an employee of the pharmacy has a reasonable fear*  
23 *of imminent bodily harm.*

24 *4. A pharmacy that complies with the provisions of this*  
25 *section is not liable in any civil action for using the real-time, stop*  
26 *sale system or for any act or omission resulting from the use of the*  
27 *system which is not the result of the negligence, recklessness or*  
28 *deliberate misconduct of the pharmacy.*

29 *5. Failure to use the real-time, stop sale system as required*  
30 *pursuant to this section is a misdemeanor punishable by a fine of*  
31 *not more than \$1,000.*

32 **Sec. 4.** *The Director of the Department of Public Safety shall*  
33 *request transaction records from the real-time, stop sale system*  
34 *which is approved pursuant to section 2 of this act. The Director*  
35 *shall forward such transaction records to law enforcement*  
36 *agencies in this State.*

37 **Sec. 5.** NRS 639.400 is hereby amended to read as follows:  
38 639.400 As used in this section and NRS 639.410 and 639.420  
39 **H** and sections 2, 3 and 4 of this act, “product that is a precursor to  
40 methamphetamine” means a product which contains ephedrine,  
41 pseudoephedrine or phenylpropanolamine or the salts, optical  
42 isomers or salts of optical isomers of such chemicals and may be  
43 marketed or distributed lawfully in the United States under the  
44 Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as  
45 a nonprescription drug.



1       **Sec. 6.** NRS 453.355 is hereby amended to read as follows:  
2       453.355 1. Except as otherwise provided in subsection 2, a  
3 retail distributor shall not:

4       (a) Sell or transfer to the same person during any calendar day,  
5 without regard to the number of transactions, more than 3.6 grams  
6 of ephedrine base, pseudoephedrine base or phenylpropanolamine  
7 base or the salts, optical isomers or salts of optical isomers of such  
8 chemicals in a product that is a precursor to methamphetamine.

9       (b) *Sell or transfer to the same person during any 30-day*  
10 *period, without regard to the number of transactions, more than 9*  
11 *grams of ephedrine base, pseudoephedrine base or*  
12 *phenylpropanolamine base or the salts, optical isomers or salts of*  
13 *optical isomers of such chemicals in a product that is a precursor*  
14 *to methamphetamine.*

15       (c) Sell at retail and in nonliquid form a product that is a  
16 precursor to methamphetamine, including, without limitation, gel  
17 caps, unless:

18       (1) The product is packaged in blister packs, each blister  
19 containing not more than two dosage units; or

20       (2) If the use of blister packs is technically infeasible, the  
21 product is packaged in unit dosage packets or pouches.

22       2. The provisions of subsection 1 do not apply if ~~+~~ **pursuant** ~~:~~:

23       (a) *Pursuant* to 21 U.S.C. § 830(e)(3), the Attorney General of  
24 the United States has determined that a product that is a precursor to  
25 methamphetamine cannot be used to manufacture methamphetamine  
26 and provided by regulation that the product is exempt from the  
27 provisions of 21 U.S.C. § 830(d).

28       (b) *The person who seeks to obtain a product that is a*  
29 *precursor to methamphetamine has a valid prescription for the*  
30 *product.*

31       **Sec. 7.** NRS 453.357 is hereby amended to read as follows:

32       453.357 1. A retail distributor shall maintain a logbook.

33       2. At the time of ~~+~~ **the** sale or transfer of a product that is a  
34 precursor to methamphetamine, a retail distributor shall ensure that  
35 the following information is entered in the logbook:

36       (a) The name of the product sold or transferred;

37       (b) The quantity of the product sold or transferred;

38       (c) The name and address of the purchaser or transferee; ~~+~~ **and** ~~:~~

39       (d) The date and time of the sale or transfer ~~+~~ **;** **and**

40       (e) *The type and number of the identification presented by the*  
41 *purchaser or transferee pursuant to paragraph (a) of subsection 3.*

42       3. A retail distributor shall not sell or transfer a product that is  
43 a precursor to methamphetamine unless:

44       (a) The prospective purchaser or transferee:



1 (1) Presents an identification card ~~{that}~~ *which* provides a  
2 photograph and *which* is issued by the *Federal* Government, ~~{of the~~  
3 ~~United States or the Government of}~~ this State or any other state, or  
4 a document that, with respect to identification, is considered  
5 acceptable pursuant to 21 U.S.C. § 830(e)(1); and

6 (2) Signs his or her name in the logbook. ~~{; and}~~

7 (b) The retail distributor ~~{determines}~~ :

8 (1) *Determines* that the name entered in the logbook  
9 corresponds to the name provided on the identification presented by  
10 the prospective purchaser or transferee ~~{; and}~~ ; and

11 (2) *Has consulted the real-time, stop sale system, if required*  
12 *pursuant to section 3 of this act.*

13 4. The retail distributor must include in the logbook or  
14 otherwise post or provide to a prospective purchaser or transferee a  
15 notice that entering a false statement or representation in the  
16 logbook may subject the prospective purchaser or transferee to  
17 criminal penalties under state law, as set forth in NRS 453.359, and  
18 under federal law, as set forth in 18 U.S.C. § 1001.

19 5. A retail distributor shall maintain each entry in the logbook  
20 for not less than 2 years after the date on which the entry is made.

21 6. A retail distributor shall not access, use or share the  
22 information in the logbook unless the accessing, using or sharing of  
23 the information is allowed by federal law or unless the purpose of  
24 accessing, using or sharing the information is to ensure compliance  
25 with this chapter or to facilitate a product recall to protect the health  
26 and safety of the public.

27 7. Upon a request, which is made for the purpose of enforcing  
28 the provisions of NRS 453.352 to 453.359, inclusive, *or 639.400,*  
29 *639.410 and 639.420 and sections 2, 3 and 4 of this act,* by a law  
30 enforcement agency of this State or a political subdivision thereof or  
31 a law enforcement agency of the Federal Government, a retail  
32 distributor shall disclose the information in the logbook to the law  
33 enforcement agency.

