

Assembly Bill No. 39–Committee
on Commerce and Labor

CHAPTER.....

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:

Existing law prohibits any person, other than a pharmacy, from selling or transferring in the course of business or selling at retail certain products that contain materials that can be used to manufacture methamphetamine. (NRS 639.410) Existing law further requires a retail distributor of such products to keep the products in a locked case or cabinet or behind a store counter to prevent access to the public. (NRS 453.354) Existing law also limits the quantity of certain chemicals contained in these products that may be sold or transferred to the same person during a calendar day. (NRS 453.355) **Section 6** of this bill establishes a limit on the quantity of these chemicals that can be sold or transferred to the same person during a 30-day period.

Existing law requires a retail distributor of certain products that can be used to manufacture methamphetamine to maintain a logbook of the sales and transfers of such a product and to ensure that certain information is entered in the logbook. (NRS 453.357) **Section 2** of this bill requires the State Board of Pharmacy to approve a real-time, stop sale system for use by pharmacies in this State if the Board determines that the real-time, stop sale system: (1) is available and appropriate for use by pharmacies in this State; and (2) the system has certain capabilities and will be available free of charge. Such a system will: (1) allow pharmacies to electronically submit information before completing a sale or transfer of such a product to determine whether the sale or transfer would violate any law; and (2) allow law enforcement agencies to access transaction records related to the sale or transfer, or attempted sale or transfer, of a product that is a precursor to methamphetamine.

Section 3 of this bill requires a pharmacy to use a real-time, stop sale system that is approved by the Board. A pharmacy is prohibited from completing a sale or transfer of a product if informed through the system that the sale or transfer will violate any law, except in certain circumstances. **Section 4.5** of this bill provides that the failure of the real-time, stop sale system or the misuse of the system does not create any civil liability for the Board. **Section 7** of this bill requires a retail distributor of certain products that can be used to manufacture methamphetamine, in addition to maintaining the logbook and checking the name and identification of a person seeking to obtain such a product, to consult with the real-time, stop sale system, if such a system is approved by the Board.



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

Section 1. Chapter 639 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4.5, inclusive, of this act.

Sec. 2. 1. *The Board shall approve a real-time, stop sale system for use by pharmacies in this State if the Board determines that a real-time, stop sale system is available and appropriate for use by pharmacies in this State. The Board shall approve a real-time, stop sale system for use by pharmacies in this State only if the Board determines that the system:*

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

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

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

(d) Will allow law enforcement agencies in this State to access from the system transaction records of any sale or transfer or attempted sale or transfer of a product that is a precursor to methamphetamine; and

(e) Is available for use by pharmacies and law enforcement agencies in this State free of charge.

2. *Before approving a real-time, stop sale system, the Board must adopt regulations establishing the minimum requirements for the real-time, stop sale system. The Board shall also adopt regulations establishing the requirements for use of the real-time, stop sale system by the pharmacies and law enforcement agencies of this State.*

Sec. 3. 1. *After the Board has approved a real-time, stop sale system pursuant to section 2 of this act and adopted regulations establishing the requirements for the use of the system pursuant to that section, the Board must notify each pharmacy in this State of the real-time, stop sale system that has been approved,*



the manner in which to establish the system in the pharmacy and the content of the regulations.

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

3. Except as otherwise provided in this subsection, if a pharmacy receives an alert from the real-time, stop sale system that the sale or transfer of a product may violate NRS 453.355 or any other law which prohibits the sale or transfer of a product that is a precursor to methamphetamine, the pharmacy must not allow the sale or transfer to be completed. The Board shall provide by regulation for exceptions to allow for the completion of a sale or transfer:

(a) Despite such an alert if the pharmacist or an employee of the pharmacy has a reasonable fear of imminent bodily harm.

(b) If a pharmacy experiences a mechanical or electronic failure of the real-time, stop sale system.

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

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

Sec. 4. (Deleted by amendment.)

Sec. 4.5. *The failure of the real-time, stop sale system approved pursuant to section 2 of this act to send an alert to a pharmacy to stop the sale or transfer of a product that is a precursor to methamphetamine in violation of NRS 453.355, or any other law which prohibits the sale or transfer of a product that is a precursor to methamphetamine, does not establish a basis for any cause of action against the Board. The Board is immune from any liability arising from or related to the unauthorized access or misuse of any information collected by or derived from*



the real-time, stop sale system approved pursuant to section 2 of this act.

Sec. 5. NRS 639.400 is hereby amended to read as follows:

639.400 As used in this section and NRS 639.410 and 639.420 ~~†~~ *and sections 2 to 4.5, inclusive, of this act*, “product that is a precursor to methamphetamine” means a product which contains ephedrine, pseudoephedrine or phenylpropanolamine or the salts, optical isomers or salts of optical isomers of such chemicals and may be marketed or distributed lawfully in the United States under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as a nonprescription drug.

Sec. 6. NRS 453.355 is hereby amended to read as follows:

453.355 1. Except as otherwise provided in subsection 2, a retail distributor shall not:

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

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

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

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

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

2. The provisions of subsection 1 do not apply if ~~†, pursuant to~~ :

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

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



Sec. 7. NRS 453.357 is hereby amended to read as follows:
453.357 1. A retail distributor shall maintain a logbook.

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

- (a) The name of the product sold or transferred;
- (b) The quantity of the product sold or transferred;
- (c) The name and address of the purchaser or transferee; ~~and~~
- (d) The date and time of the sale or transfer ~~;~~ *and*

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

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

- (a) The prospective purchaser or transferee:

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

- (2) Signs his or her name in the logbook. ~~;~~ *and*

- (b) The retail distributor ~~determines~~ *:*

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

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

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

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

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



7. Upon a request, which is made for the purpose of enforcing the provisions of NRS 453.352 to 453.359, inclusive, *or 639.400, 639.410 and 639.420 and sections 2 to 4.5, inclusive, of this act*, by a law enforcement agency of this State or a political subdivision thereof or a law enforcement agency of the Federal Government, a retail distributor shall disclose the information in the logbook to the law enforcement agency.

