

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 State Board of Pharmacy to
15 approve a real-time, stop sale system for use by pharmacies in this State if the
16 Board determines that the real-time, stop sale system: (1) is available and
17 appropriate for use by pharmacies in this State; and (2) the system has certain
18 capabilities and will be available free of charge. Such a system will: (1) allow
19 pharmacies to electronically submit information before completing a sale or
20 transfer of such a product to determine whether the sale or transfer would violate



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21 any law; and (2) allow law enforcement agencies to access transaction records
22 related to the sale or transfer, or attempted sale or transfer, of a product that is a
23 precursor to methamphetamine.

24 **Section 3** of this bill requires a pharmacy to use a real-time, stop sale system
25 that is approved by the Board. A pharmacy is prohibited from completing a sale or
26 transfer of a product if informed through the system that the sale or transfer will
27 violate any law, except in certain circumstances. **Section 4.5** of this bill provides
28 that the failure of the real-time, stop sale system or the misuse of the system does
29 not create any civil liability for the Board. **Section 7** of this bill requires a retail
30 distributor of certain products that can be used to manufacture methamphetamine,
31 in addition to maintaining the logbook and checking the name and identification of
32 a person seeking to obtain such a product, to consult with the real-time, stop sale
33 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:

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

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

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

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

27 **2. *Before approving a real-time, stop sale system, the Board***
28 ***must adopt regulations establishing the minimum requirements***
29 ***for the real-time, stop sale system. The Board shall also adopt***
30 ***regulations establishing the requirements for use of the real-time,***



1 *stop sale system by the pharmacies and law enforcement agencies*
2 *of this State.*

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

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

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

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

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

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

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

40 **Sec. 4.** (Deleted by amendment.)

41 **Sec. 4.5.** *The failure of the real-time, stop sale system*
42 *approved pursuant to section 2 of this act to send an alert to a*
43 *pharmacy to stop the sale or transfer of a product that is a*
44 *precursor to methamphetamine in violation of NRS 453.355, or*
45 *any other law which prohibits the sale or transfer of a product that*



1 *is a precursor to methamphetamine, does not establish a basis for*
2 *any cause of action against the Board. The Board is immune*
3 *from any liability arising from or related to the unauthorized*
4 *access or misuse of any information collected by or derived from*
5 *the real-time, stop sale system approved pursuant to section 2 of*
6 *this act.*

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

8 639.400 As used in this section and NRS 639.410 and 639.420
9 **† and sections 2 to 4.5, inclusive, of this act,** “product that is a
10 precursor to methamphetamine” means a product which contains
11 ephedrine, pseudoephedrine or phenylpropanolamine or the salts,
12 optical isomers or salts of optical isomers of such chemicals and
13 may be marketed or distributed lawfully in the United States under
14 the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq.,
15 as a nonprescription drug.

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

17 453.355 1. Except as otherwise provided in subsection 2, a
18 retail distributor shall not:

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

24 (b) *Sell or transfer to the same person during any*
25 *30-day period, without regard to the number of transactions, more*
26 *than 9 grams of ephedrine base, pseudoephedrine base or*
27 *phenylpropanolamine base or the salts, optical isomers or salts of*
28 *optical isomers of such chemicals in a product that is a precursor*
29 *to methamphetamine.*

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

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

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

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

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

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



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

2 453.357 1. A retail distributor shall maintain a logbook.

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

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

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

8 (c) The name and address of the purchaser or transferee; ~~and~~

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

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

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

15 (a) The prospective purchaser or transferee:

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

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

22 (b) The retail distributor ~~determines~~:

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

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

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

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

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

43 7. Upon a request, which is made for the purpose of enforcing
44 the provisions of NRS 453.352 to 453.359, inclusive, *or 639.400,*
45 *639.410 and 639.420 and sections 2 to 4.5, inclusive, of this act,* by



- 1 a law enforcement agency of this State or a political subdivision
- 2 thereof or a law enforcement agency of the Federal Government, a
- 3 retail distributor shall disclose the information in the logbook to the
- 4 law enforcement agency.

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