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HOUSE BILL 146

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO METHAMPHETAMINE PRODUCTION; RESTRICTING THE AMOUNT OF PURCHASE OF PRODUCTS WITH AN EPHEDRINE OR PSEUDOEPHEDRINE BASE; REQUIRING RETAILERS OF NONPRESCRIPTION PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE TO USE A REAL-TIME STOP SALE SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. RESTRICTIONS OF SALE OF EPHEDRINE OR PSEUDOEPHEDRINE--IDENTIFICATION--USE OF REAL-TIME STOP SALE SYSTEM REQUIRED--SYSTEM REQUIREMENT--PENALTIES--DEFINITIONS.--**

A. A retailer shall not sell to the same person, and a person shall not purchase, products containing more than three and six-tenths grams per day or more than nine grams per thirty-day period of ephedrine or pseudoephedrine base, or their isomers. The limits shall apply to the total amount of

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1 base ephedrine and pseudoephedrine contained in the products  
2 and not the overall weight of the products.

3 B. Nonprescription products containing  
4 pseudoephedrine or ephedrine shall be maintained behind the  
5 counter or in a locked case where the customer does not have  
6 direct access.

7 C. The retailer shall require any person purchasing  
8 a nonprescription product that contains pseudoephedrine or  
9 ephedrine to present valid government-issued photo  
10 identification at the point of sale. The retailer shall record  
11 the name and address of the purchaser; name and quantity of  
12 product purchased; date and time purchased; and purchaser  
13 identification type and number, such as a driver's license  
14 state and number, and require the purchaser's signature in a  
15 paper or electronic logbook.

16 D. Beginning January 1, 2014, a retailer shall,  
17 before completing a sale under this section, electronically  
18 submit the required information to the real-time stop sale  
19 system administered by the board of pharmacy; provided that the  
20 system is available without a charge to retailers for access.

21 E. Absent negligence, wantonness, recklessness or  
22 deliberate misconduct, any retailer utilizing the real-time  
23 stop sale system in accordance with this section shall not be  
24 civilly liable as a result of any act or omission in carrying  
25 out the duties required by this section and shall be immune

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1 from liability to any third party unless the retailer has  
2 violated any provision of this section in relation to a claim  
3 brought for such violation.

4 F. If a retailer selling a nonprescription product  
5 containing pseudoephedrine or ephedrine experiences mechanical  
6 or electronic failure of the real-time stop sale system and is  
7 unable to comply with the real-time stop sale system  
8 requirement, the retailer shall maintain a written log or an  
9 alternative electronic record keeping mechanism until such time  
10 as the retailer is able to comply with the real-time stop sale  
11 system requirement.

12 G. The vendor of the real time stop sale system  
13 shall forward state transaction records in the real-time stop  
14 sale system to the appropriate state agency weekly and provide  
15 real-time access to the real-time stop sale system information  
16 through the system's online portal to law enforcement in the  
17 state as authorized by the agency.

18 H. The real-time stop sale system shall be capable  
19 of generating a stop sale alert, which shall be a notification  
20 that completion of the sale would result in the seller or  
21 purchaser violating the quantity limits set forth in this  
22 section. The seller shall not complete the sale if the system  
23 generates a stop sale alert. The system shall contain an  
24 override function that may be used by a dispenser of ephedrine  
25 or pseudoephedrine who has a reasonable fear of imminent bodily

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1 harm if the dispenser does not complete a sale. Each instance  
2 in which the override function is utilized shall be logged by  
3 the system.

4 I. A person who violates any provision of this  
5 section is a guilty of a misdemeanor and shall be punished by a  
6 fine of no more than one thousand dollars (\$1,000). If a  
7 product is dispensed in violation of Subsection A of this  
8 section, the owner or operator of the wholesale or retail  
9 establishment dispensing the product shall be in violation of  
10 Subsection A of this section.

11 J. This section does not apply to a person who  
12 obtains the product pursuant to a valid prescription.

13 K. This section shall supersede any local laws or  
14 ordinances, including those of home rule municipalities,  
15 regulating the sale of products containing pseudoephedrine or  
16 ephedrine.

17 L. For the purposes of this section, "real-time  
18 stop sale system" means a system intended to be used by law  
19 enforcement agencies and pharmacies or other business  
20 establishments that:

21 (1) is installed, operated and maintained free  
22 of any one-time or recurring charge to the business  
23 establishment or to the state;

24 (2) is able to communicate in real time with  
25 similar systems operated in other states and similar systems

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- 1 containing information submitted by more than one state;
- 2 (3) complies with the security policy of the
- 3 criminal justice information services division of the federal
- 4 bureau of investigation;
- 5 (4) complies with information exchange
- 6 standards adopted by the national information exchange model;
- 7 (5) uses a mechanism to prevent the completion
- 8 of a sale of a product containing ephedrine or pseudoephedrine
- 9 that would violate state or federal law regarding the purchase
- 10 of a product containing those substances; and
- 11 (6) is equipped with an override of the
- 12 mechanism that:
  - 13 (a) may be activated by an employee of a
  - 14 business establishment; and
  - 15 (b) creates a record of each activation
  - 16 of the override.

17 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is July 1, 2013.