

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 146

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

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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underscored material = new
~~[bracketed material] = delete~~

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. A retailer shall require any person purchasing a
8 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
20 access to any equipment, maintenance or training necessary to
21 implement the system is available without a charge to
22 retailers.

23 E. Absent wantonness, recklessness or deliberate
24 misconduct, any retailer utilizing the real-time stop sale
25 system in accordance with this section shall not be civilly

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1 liable as a result of any act or omission in carrying out the
2 duties required by this section and shall be immune from
3 liability to any third party unless the retailer has violated
4 any provision of this section in relation to a claim brought
5 for such violation.

6 F. If a retailer selling a nonprescription product
7 containing pseudoephedrine or ephedrine experiences mechanical
8 or electronic failure of the real-time stop sale system and is
9 unable to comply with the real-time stop sale system
10 requirement, the retailer shall maintain a written log or an
11 alternative electronic record keeping mechanism until such time
12 as the retailer is able to comply with the real-time stop sale
13 system requirement. In the case of a prolonged outage of the
14 system, a retailer shall log applicable sales and report them
15 to the board of pharmacy in accordance with rules promulgated
16 by the board.

17 G. A retailer shall not be responsible for any
18 charges associated with the design, implementation or operation
19 of the real-time stop sale system.

20 H. A retailer selling a nonprescription product
21 containing pseudoephedrine or ephedrine may request an
22 exemption from electronic reporting from the board of pharmacy
23 if the retailer lacks the technology to access the real-time
24 stop sale system and the retailer maintains a sales volume of
25 less than seventy-two grams of pseudoephedrine, ephedrine or

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1 related compounds in a thirty-day period.

2 I. The vendor of the real-time stop sale system
3 shall forward state transaction records in the real-time stop
4 sale system to the board of pharmacy weekly and provide
5 real-time access to the real-time stop sale system information
6 through the system's online portal to law enforcement.

7 J. The real-time stop sale system shall be capable
8 of generating a stop sale alert, which shall be a notification
9 that completion of the sale would result in the seller or
10 purchaser violating the quantity limits set forth in this
11 section. The seller shall not complete the sale if the system
12 generates a stop sale alert. The system shall contain an
13 override function that may be used by a seller of ephedrine or
14 pseudoephedrine who has a reasonable fear of imminent bodily
15 harm if the seller does not complete a sale. Each instance in
16 which the override function is utilized shall be logged by the
17 system.

18 K. A person who violates any provision of this
19 section is a guilty of a misdemeanor and shall be punished by a
20 fine of no more than one thousand dollars (\$1,000). If a
21 product is dispensed in violation of Subsection A of this
22 section, the owner or operator of the wholesale or retail
23 establishment dispensing the product shall be in violation of
24 Subsection A of this section.

25 L. This section does not apply to a person who

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1 obtains the product pursuant to a valid prescription.

2 M. The board of pharmacy may oversee the
3 implementation and operation of the real-time stop sale system
4 and enforce the provisions of this section. The board shall
5 consult with the department of information technology to ensure
6 the real-time stop sale system follows proper protocols as
7 determined by the department.

8 N. This section shall supersede any local laws or
9 ordinances, including those of home rule municipalities,
10 regulating the sale of products containing pseudoephedrine or
11 ephedrine.

12 O. For the purposes of this section, "real-time
13 stop sale system" means a system intended to be used by law
14 enforcement agencies and pharmacies or other business
15 establishments that:

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

19 (2) is able to communicate in real time with
20 similar systems operated in other states and similar systems
21 containing information submitted by more than one state;

22 (3) complies with the security policy of the
23 criminal justice information services division of the federal
24 bureau of investigation;

25 (4) complies with information exchange

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1 standards adopted by the national information exchange model;

2 (5) uses a mechanism to prevent the completion
3 of a sale of a product containing ephedrine or pseudoephedrine
4 that would violate state or federal law regarding the purchase
5 of a product containing those substances; and

6 (6) is equipped with an override of the
7 mechanism that:

8 (a) may be activated by an employee of a
9 business establishment; and

10 (b) creates a record of each activation
11 of the override.

12 SECTION 2. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2013.