

By the Committee on Criminal Justice; and Senators Baker and Siplin

591-03242-10

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1 A bill to be entitled
2 An act relating to the sale of ephedrine or related
3 compounds; amending s. 893.1495, F.S.; providing a
4 definition; prohibiting obtaining or delivering to an
5 individual in a the retail sale any nonprescription
6 compound, mixture, or preparation containing ephedrine
7 or related compounds in excess of specified amounts;
8 revising provisions relating to retail display of
9 products containing ephedrine or related compounds;
10 revising provisions relating to the training of retail
11 employees; requiring a purchaser of a nonprescription
12 compound, mixture, or preparation containing any
13 detectable quantity of ephedrine or related compounds
14 to meet specified requirements; requiring the use of
15 an electronic recordkeeping mechanism approved by the
16 Department of Law Enforcement for such transactions to
17 record specified information; providing exemptions
18 from the electronic recordkeeping requirement;
19 revising provisions concerning local ordinances or
20 regulations; providing exemptions for certain
21 entities; conforming provisions governing criminal
22 penalties for violations; requiring the Department of
23 Law Enforcement to adopt rules; providing an effective
24 date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Section 893.1495, Florida Statutes, is amended
29 to read:

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893.1495 Retail sale of ephedrine and related compounds.—

(1) For purposes of this section, the term "ephedrine or related compounds" means ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(2)(1) A No person may not shall knowingly obtain or deliver to an individual in any single retail over-the-counter sale any number of packages of any nonprescription compound, mixture, or preparation drug containing a sole active ingredient that contains a combined total of more than 9 base grams of ephedrine or related compounds in excess of the following amounts:

(a) In any single day, any number of packages that contain a total of 3.6 grams of ephedrine or related compounds;

(b) In any single retail, over-the-counter sale, three packages, regardless of weight, containing ephedrine or related compounds; or

(c) In any 30-day period, in any number of retail, over-the-counter sales, a total of 9 grams or more of ephedrine or related compounds, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single retail over-the-counter sale, regardless of weight, containing any such sole active ingredient.

(3)(2) A No person may not shall knowingly display and offer for retail sale packages of any nonprescription compound, mixture, or preparation containing drug having a sole active ingredient of ephedrine or related compounds, pseudoephedrine, phenylpropanolamine, or any of their salts or optical isomers

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59 other than behind a checkout counter where the public is not
60 permitted or other such location that is not otherwise
61 accessible to the general public.

62 ~~(4)-(3)~~ A No person who is the owner or primary operator of
63 a retail outlet where any nonprescription compound, mixture, or
64 preparation containing ephedrine or related compounds is,
65 ~~pseudoephedrine, or phenylpropanolamine products~~ are available
66 for sale may not shall knowingly allow an employee to engage in
67 the retail sale of such compound, mixture, or preparation
68 ~~products~~ unless the employee has completed an employee training
69 program that shall include, at a minimum, basic instruction on
70 state and federal regulations relating to the sale and
71 distribution of such compounds, mixtures, or preparations
72 ~~products~~.

73 (5) (a) Any person purchasing, receiving, or otherwise
74 acquiring any nonprescription compound, mixture, or preparation
75 containing any detectable quantity of ephedrine or related
76 compounds must:

77 1. Be at least 18 years of age.

78 2. Produce a government-issued photo identification showing
79 his or her name, date of birth, address, and photo
80 identification number.

81 3. Sign his or her name on a record of the purchase, either
82 on paper or on an electronic signature capture device.

83 (b) The Department of Law Enforcement shall approve an
84 electronic recordkeeping system for the purpose of recording and
85 monitoring the real-time purchase of products containing
86 ephedrine or related compounds and for the purpose of monitoring
87 this information in order to prevent or investigate illegal

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88 purchases of these products. The approved electronic
89 recordkeeping system shall be provided to a pharmacy or retailer
90 without any additional cost or expense. A pharmacy or retailer
91 may request an exemption from electronic reporting from the
92 Department of Law Enforcement if the pharmacy or retailer lacks
93 the technology to access the electronic recordkeeping system and
94 such pharmacy or retailer maintains a sales volume of less than
95 72 grams of ephedrine or related compounds in a 30-day period.

96 The electronic recordkeeping system shall record the following:

97 1. The date and time of the transaction.

98 2. The name, date of birth, address, and photo
99 identification number of the purchaser, as well as the type of
100 identification and the government of issuance.

101 3. The number of packages purchased, the total grams per
102 package, and the name of the compound, mixture, or preparation
103 containing ephedrine or related compounds.

104 4. The signature of the purchaser, or a unique number
105 relating the transaction to a paper signature maintained at the
106 retail premises.

107 (c) The electronic recordkeeping system shall provide for:

108 1. Real-time tracking of nonprescription over-the-counter
109 sales under this section.

110 2. The blocking of nonprescription over-the-counter sales
111 in excess of those allowed by the laws of this state or federal
112 law.

113 (6) A nonprescription compound, mixture, or preparation
114 containing any quantity of ephedrine or related compounds may
115 not be sold over the counter unless reported to an electronic
116 recordkeeping system approved by the Department of Law

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117 Enforcement.

118 (7) Prior to completing a transaction, a pharmacy or
119 retailer distributing products containing ephedrine or related
120 compounds to consumers in this state shall submit all required
121 data into an electronic recordkeeping system approved by the
122 Department of Law Enforcement at the point of sale or through an
123 interface with the electronic recordkeeping system, unless
124 granted an exemption by the Department of Law Enforcement
125 pursuant to paragraph (5) (b).

126 (8) The data submitted to the electronic recordkeeping
127 system must be retained within the system for no less than 2
128 years following the date of entry.

129 (9)~~(4)~~ The requirements of this section relating to the
130 marketing, sale, or distribution of products containing
131 ephedrine or related compounds,~~pseudoephedrine, or~~
132 ~~phenylpropanolamine products shall~~ supersede any local ordinance
133 or regulation passed by a county, municipality, or other local
134 governmental authority.

135 (10) This section does not apply to:

136 (a) Licensed manufacturers manufacturing and lawfully
137 distributing products in the channels of commerce.

138 (b) Wholesalers lawfully distributing products in the
139 channels of commerce.

140 (c) Health care facilities licensed under chapter 395.

141 (d) Licensed long-term care facilities.

142 (e) Government-operated health departments.

143 (f) Physicians' offices.

144 (g) Publicly operated prisons, jails, or juvenile
145 correctional facilities or private adult or juvenile

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146 correctional facilities under contract with the state.

147 (h) Public or private educational institutions maintaining
148 health care programs.

149 (i) Government-operated or industry-operated medical
150 facilities serving employees of the government or industry
151 operating them.

152 (11)-(5) Any individual who violates subsection (1),
153 subsection (2), ~~or~~ subsection (3), or subsection (4) commits:

154 (a) For a first offense, a misdemeanor of the second
155 degree, punishable as provided in s. 775.083.

156 (b) For a second offense, a misdemeanor of the first
157 degree, punishable as provided in s. 775.082 or s. 775.083.

158 (c) For a third or subsequent offense, a felony of the
159 third degree, punishable as provided in s. 775.082, s. 775.083,
160 or s. 775.084.

161 (12) Information contained within the electronic
162 recordkeeping system shall be disclosed in a manner authorized
163 by state or federal law.

164 (13) A person who sells any product containing ephedrine or
165 related compounds who in good faith complies with the
166 requirements of this section is immune from civil liability for
167 the release of the information.

168 (14) The Department of Law enforcement shall contract or
169 enter into a memorandum of understanding, as applicable, with a
170 private third-party administrator to implement the electronic
171 recordkeeping system required by this section.

172 (15) The Department of Law Enforcement shall adopt rules
173 necessary to implement this section.

174 Section 2. This act shall take effect July 1, 2010, and

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175 shall be implemented by January 1, 2011.