

By the Committees on Judiciary; and Criminal Justice; and
Senators Baker, Siplin, and Gaetz

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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 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; prohibiting any retailer or entity that
22 collects information on behalf of a retailer from
23 accessing or using the information, except for law
24 enforcement purposes or to facilitate a product recall
25 for public health and safety; providing limited civil
26 immunity for the release of information to law
27 enforcement officers; conforming provisions governing
28 criminal penalties for violations; requiring the
29 Department of Law Enforcement to adopt rules;

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30 providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Section 893.1495, Florida Statutes, is amended
35 to read:

36 893.1495 Retail sale of ephedrine and related compounds.—

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

41 (2)~~(1)~~ A No person may not shall knowingly obtain or
42 deliver to an individual in any single retail over-the-counter
43 sale any number of packages of any nonprescription compound,
44 mixture, or preparation drug containing a sole active ingredient
45 that contains a combined total of more than 9 base grams of
46 ephedrine or related compounds in excess of the following
47 amounts:

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

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

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

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59 ingredient.

60 ~~(3)-(2)~~ A No person may not shall knowingly display and
61 offer for retail sale ~~packages of any nonprescription compound,~~
62 mixture, or preparation containing drug having a sole active
63 ingredient of ephedrine or related compounds, pseudoephedrine,
64 phenylpropanolamine, or any of their salts or optical isomers
65 other than behind a checkout counter where the public is not
66 permitted or other such location that is not otherwise
67 accessible to the general public.

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

79 (5) (a) Any person purchasing, receiving, or otherwise
80 acquiring any nonprescription compound, mixture, or preparation
81 containing any detectable quantity of ephedrine or related
82 compounds must:

- 83 1. Be at least 18 years of age.
- 84 2. Produce a government-issued photo identification showing
85 his or her name, date of birth, address, and photo
86 identification number or an alternative form of identification
87 acceptable under federal regulation 8 C.F.R. s.

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88 274a.2(b)(1)(v)(A) and (B).

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

91 (b) The Department of Law Enforcement shall approve an
92 electronic recordkeeping system for the purpose of recording and
93 monitoring the real-time purchase of products containing
94 ephedrine or related compounds and for the purpose of monitoring
95 this information in order to prevent or investigate illegal
96 purchases of these products. The approved electronic
97 recordkeeping system shall be provided to a pharmacy or retailer
98 without any additional cost or expense. A pharmacy or retailer
99 may request an exemption from electronic reporting from the
100 Department of Law Enforcement if the pharmacy or retailer lacks
101 the technology to access the electronic recordkeeping system and
102 such pharmacy or retailer maintains a sales volume of less than
103 72 grams of ephedrine or related compounds in a 30-day period.
104 The electronic recordkeeping system shall record the following:

105 1. The date and time of the transaction.

106 2. The name, date of birth, address, and photo
107 identification number of the purchaser, as well as the type of
108 identification and the government of issuance.

109 3. The number of packages purchased, the total grams per
110 package, and the name of the compound, mixture, or preparation
111 containing ephedrine or related compounds.

112 4. The signature of the purchaser, or a unique number
113 relating the transaction to a paper signature maintained at the
114 retail premises.

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

116 1. Real-time tracking of nonprescription over-the-counter

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117 sales under this section.

118 2. The blocking of nonprescription over-the-counter sales
119 in excess of those allowed by the laws of this state or federal
120 law.

121 (6) A nonprescription compound, mixture, or preparation
122 containing any quantity of ephedrine or related compounds may
123 not be sold over the counter unless reported to an electronic
124 recordkeeping system approved by the Department of Law
125 Enforcement. This subsection does not apply if the pharmacy or
126 retailer has received an exemption from the Department of Law
127 Enforcement under paragraph (5) (b).

128 (7) Prior to completing a transaction, a pharmacy or
129 retailer distributing products containing ephedrine or related
130 compounds to consumers in this state shall submit all required
131 data into an electronic recordkeeping system approved by the
132 Department of Law Enforcement at the point of sale or through an
133 interface with the electronic recordkeeping system, unless
134 granted an exemption by the Department of Law Enforcement
135 pursuant to paragraph (5) (b).

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

139 (9)~~(4)~~ The requirements of this section relating to the
140 marketing, sale, or distribution of products containing
141 ephedrine or related compounds, pseudoephedrine, or
142 phenylpropanolamine products shall supersede any local ordinance
143 or regulation passed by a county, municipality, or other local
144 governmental authority.

145 (10) This section does not apply to:

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- 146 (a) Licensed manufacturers manufacturing and lawfully
147 distributing products in the channels of commerce.
- 148 (b) Wholesalers lawfully distributing products in the
149 channels of commerce.
- 150 (c) Health care facilities licensed under chapter 395.
- 151 (d) Licensed long-term care facilities.
- 152 (e) Government-operated health departments.
- 153 (f) Physicians' offices.
- 154 (g) Publicly operated prisons, jails, or juvenile
155 correctional facilities or private adult or juvenile
156 correctional facilities under contract with the state.
- 157 (h) Public or private educational institutions maintaining
158 health care programs.
- 159 (i) Government-operated or industry-operated medical
160 facilities serving employees of the government or industry
161 operating them.
- 162 ~~(11)(5)~~ Any individual who violates ~~subsection (1),~~
163 subsection (2), or subsection (3), or subsection (4) commits:
- 164 (a) For a first offense, a misdemeanor of the second
165 degree, punishable as provided in s. 775.083.
- 166 (b) For a second offense, a misdemeanor of the first
167 degree, punishable as provided in s. 775.082 or s. 775.083.
- 168 (c) For a third or subsequent offense, a felony of the
169 third degree, punishable as provided in s. 775.082, s. 775.083,
170 or s. 775.084.
- 171 (12) Information contained within the electronic
172 recordkeeping system shall be disclosed in a manner authorized
173 by state or federal law. Any retailer or entity that collects
174 information on behalf of a retailer as required by the Combat

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175 Methamphetamine Epidemic Act of 2005 and this section may not
176 access or use that information, except for law enforcement
177 purposes pursuant to state or federal law or to facilitate a
178 product recall for public health and safety.

179 (13) A person who sells any product containing ephedrine or
180 related compounds who in good faith releases information under
181 this section to federal, state, or local law enforcement
182 officers, or any person acting on behalf of such an officer, is
183 immune from civil liability for the release unless the release
184 constitutes gross negligence or intentional, wanton, or willful
185 misconduct.

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

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

192 Section 2. This act shall take effect July 1, 2010, and
193 shall be implemented by January 1, 2011.