SENATE BILL 325
By Beavers

HOUSE BILL 234

By Maggart

AN ACT to amend Tennessee Code Annotated, Section 39-17-431 relative to record keeping for certain drug sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the section in its entirety and by substituting instead the following:

39-17-431.

(a) Except as provided in this section, any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy.

(b)

(1) A product or category of products that contains any immediate methamphetamine precursor shall be exempt from the requirements of this section if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The board of pharmacy, in consultation with the Tennessee bureau of investigation, shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors:

(A) The ease with which the product can be converted to methamphetamine, including the presence or absence of a “molecular lock” completely preventing a product's use in methamphetamine manufacture;

(B) The ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion, or other form; and

(C) Any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3) The board of pharmacy shall maintain a public list of the exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list. The list shall include, but not be limited to, products in the form of gel capsules and liquid preparations that contain any immediate methamphetamine precursor. The term “gel capsule” means any soft gelatin liquid-filled capsule that contains a liquid suspension, that, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin covered solid does not constitute a “gel capsule” under this subdivision (b)(3).

(c) A pharmacy shall not sell to the same person products containing more than three and six tenths (3.6) grams per day, or more than nine (9) grams per thirty-day period, of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products. The prohibition contained in this subsection (c) shall not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed physician, certified physician assistant, or nurse authorized under § 63-6-204, who is rendering service under the supervision, control, and responsibility of a licensed physician and who meets the requirements of § 63-7-207(13).

(d) The pharmacist or any pharmacy technician or pharmacy intern under the supervision of the pharmacist shall require any person purchasing an over-the counter product containing pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The pharmacist, pharmacy technician, or pharmacy intern shall maintain an electronic record of the sale under this subsection (d) and the record may be maintained in the form of a pharmacist prescription order as provided by § 63-10-206(c). The electronic record shall include the name and address of purchaser; name and quantity of product purchased; date and time purchased; purchaser identification type and number, such as driver license state and number; and the identity, such as name, initials or identification code, of the dispensing pharmacist, pharmacy technician, or pharmacy intern. If a system is not able to record the identification type and number, the pharmacist, pharmacy technician, or pharmacy intern shall write the identification type and number on the prescription order. The electronic record shall also be maintained in a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased.

(e) Beginning January 1, 2012, a pharmacy shall, before completing a sale of an over-the counter product containing pseudoephedrine or ephedrine not otherwise excluded from the record keeping requirement, electronically submit the required information to the national precursor log exchange (NPLEx) administered by the national association of drug diversion investigators (NADDI); provided, that the NPLEx system is available to pharmacies in the state without a charge for accessing or using the system. The seller shall not complete the sale if the system generates a stop sale alert except as provided under subsection (j). Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the electronic sales tracking system in

accordance with this subsection (e) shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection (e) and shall be immune from liability to any third party unless the retailer has violated this subsection (e) in relation to a claim brought for such violation. This subsection (e) shall not apply to a person who obtains the product or products pursuant to a valid prescription.

(f) If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the pharmacy or retail establishment is able to comply with the electronic sales tracking requirement.

(g) A pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons therefore. The board of pharmacy may grant an exemption for good cause shown, but in no event shall such exemption exceed one hundred eighty (180) days. Any pharmacy or retail establishment that receives an exemption shall maintain a hardcopy logbook and must still require the purchaser to provide the information required under this section before completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or inspector of the board of pharmacy during normal business hours.

(h) Nonexempt products containing an immediate methamphetamine precursor shall be maintained behind the counter of the pharmacy or in a locked case within view of and within twenty-five feet (25') of the counter.

(i) NADDI shall forward Tennessee transaction records in NPLEx to the bureau of investigation weekly and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the state as authorized by the bureau free of charge; provided, that the bureau executes a memorandum of understanding with NADDI governing access.

(j) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this section. The system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if they do not complete a sale. Each instance in which the override function is utilized shall be logged by the system.

(k) A violation of any provision of this section is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, the violation shall be reported to the board of pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a).

(l) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it.