SENATE BILL NO. 203–SENATOR LESLIE

FEBRUARY 28, 2011

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the classification and dispensing of certain precursors to methamphetamine. (BDR 40-648)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to controlled substances; requiring the State Board of Pharmacy to classify certain precursors to methamphetamine as controlled substances which must not be dispensed without a prescription; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Pharmacy to add, delete or reschedule substances from the schedule of controlled substances. (NRS 453.146) Additionally, existing law regulates the sale of ephedrine base, pseudoephedrine base or phenylpropanolamine base or the salts, optical isomers or salts of optical isomers of such chemicals in a product that is a precursor to methamphetamine. (NRS 453.352-453.359)

Section 1 of this bill requires the Board to designate ephedrine, pseudoephedrine and phenylpropanolamine as controlled substances included in schedule III, regardless of the amount thereof.

Existing law generally prohibits the Board from including any nonnarcotic substance on any schedule of controlled substances if that substance is in a form suitable for final dosage and has been approved by the Food and Drug Administration for sale over the counter without a prescription. (NRS 453.2186) **Section 2** of this bill provides an exemption from this general prohibition for those substances which **section 1** specifically requires the Board to designate as controlled substances. **Section 3** of this bill provides that, except when dispensed directly by a practitioner to an ultimate user, the substances described in **section 1** must not be dispensed without a written or oral prescription of a practitioner.

This bill expands the scope of existing penalties for unlawful acts relating to controlled substances to include acts which involve the substances described in **section 1** which are designated by the Board as controlled substances classified in schedule III, including when those substances have been approved by the Food and Drug Administration for sale over the counter without a prescription.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 453.146 is hereby amended to read as follows:

453.146 1. The Board shall administer the provisions of NRS 453.011 to 453.552, inclusive, and may add substances to or delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.

2. In making a determination regarding a substance, the Board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychic or physiological dependence liability; and

(h) Whether the substance is an immediate precursor of a controlled substance.

3. The Board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

4. After considering the factors enumerated in subsection 2, the Board shall make findings with respect thereto and adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

5. The Board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The Board may not designate as a controlled substance an anabolic steroid which is:

(a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and

(b) Approved by the Food and Drug Administration for such use.

6. The Board shall designate as a controlled substance included in schedule III, regardless of the amount thereof:

(a) Ephedrine, its optical isomers, salts and salts of optical isomers;

(b) Pseudoephedrine, its optical isomers, salts and salts of optical isomers; and

(c) Phenylpropanolamine, its optical isomers, salts and salts of optical isomers.

Sec. 2. NRS 453.2186 is hereby amended to read as follows:

453.2186 1. Authority to control pursuant to NRS 453.146, 453.218, 453.2182 and 453.2184 does not extend to distilled spirits, wine, malt beverages or tobacco.

2. The Board shall not include any nonnarcotic substance on any schedule if that substance is in a form suitable for final dosage and has been approved by the Food and Drug Administration for sale over the counter without a prescription, unless the Board ***is required to include the substance on a schedule pursuant to subsection 6 of NRS 453.146 or the Board*** affirmatively finds that:

(a) The substance itself or one or more of its active ingredients is an immediate precursor of a controlled substance; and

(b) The substance is materially misbranded or mislabeled, or the public interest requires the scheduling of the substance as a controlled substance in schedule I, II, III or IV.

3. In determining whether the public interest requires the scheduling of the substance, the Board shall consider:

(a) Whether the customary methods of marketing and distributing the substance are likely to lead to its unlawful distribution or use, including any relevant information with regard to a manufacturer or distributor of the substance concerning:

(1) His or her record of compliance with applicable federal, state and local statutes, ordinances and regulations;

(2) His or her past experience in the manufacture and distribution of controlled substances, and the existence in his or her establishment of effective controls against the unlawful distribution or use of the substance;

(3) Whether he or she has ever been convicted under any federal or state law relating to a controlled substance; and

(4) Whether he or she has ever furnished materially falsified or fraudulent material in any application filed pursuant to NRS 453.011 to 453.552, inclusive;

(b) Whether the substance is controlled under the federal Controlled Substances Act;

(c) The status of any pending proceeding to determine whether the substance should be controlled or exempted from control;

(d) Any history of abuse or misuse of the substance in this State; and

(e) Any other factors which are relevant to the public health and safety.

4. In determining whether a substance is misbranded or mislabeled, the Board shall consider the requirements of the federal Food, Drug, and Cosmetic Act and the Code of Federal Regulations concerning indications for its use and any advertising for a use not so indicated.

Sec. 3. NRS 453.256 is hereby amended to read as follows:

453.256 1. Except as otherwise provided in subsection 2, a substance included in schedule II must not be dispensed without the written prescription of a practitioner.

2. A controlled substance included in schedule II may be dispensed without the written prescription of a practitioner only:

(a) In an emergency, as defined by regulation of the Board, upon oral prescription of a practitioner, reduced to writing promptly and in any case within 72 hours, signed by the practitioner and filed by the pharmacy.

(b) Upon the use of a facsimile machine to transmit the prescription for a substance included in schedule II by a practitioner or a practitioner's agent to a pharmacy for:

(1) Direct administration to a patient by parenteral solution; or

(2) A resident of a facility for intermediate care or a facility for skilled nursing which is licensed as such by the Health Division of the Department.

➥ A prescription transmitted by a facsimile machine pursuant to this paragraph must be printed on paper which is capable of being retained for at least 2 years. For the purposes of this section, such a prescription constitutes a written prescription. The pharmacy shall keep prescriptions in conformity with the requirements of NRS 453.246. A prescription for a substance included in schedule II must not be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a substance included in schedule III or IV which is a dangerous drug as determined under NRS 454.201 ~~[,]~~ ***or which is described in subsection 6 of NRS 453.146,*** must not be dispensed without a written or oral prescription of a practitioner. The prescription must not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

4. A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

5. A practitioner may dispense or deliver a controlled substance to or for a person or animal only for medical treatment or authorized research in the ordinary course of his or her profession.

6. No civil or criminal liability or administrative sanction may be imposed on a pharmacist for action taken in good faith in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

7. An individual practitioner may not dispense a substance included in schedule II, III or IV for the practitioner's own personal use except in a medical emergency.

8. A person who violates this section is guilty of a category E felony and shall be punished as provided in NRS 193.130.

9. As used in this section:

(a) "Facsimile machine" means a device which sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.

(b) "Medical treatment" includes dispensing or administering a narcotic drug for pain, whether or not intractable.

(c) "Parenteral solution" has the meaning ascribed to it in NRS 639.0105.

Sec. 4. The State Board of Pharmacy shall adopt regulations to carry out the amendatory provisions of this act on or before October 1, 2011.

Sec. 5. It is an affirmative defense to a charge of violating NRS 453.336 or 453.411 by possessing or using ephedrine, pseudoephedrine, phenylpropanolamine, the optical isomers, salts and salts of optical isomers of those substances or any combination of these substances that the person:

1. Lawfully obtained possession of the ephedrine, pseudoephedrine, phenylpropanolamine, optical isomers, salts and salts of optical isomers of those substances or any combination of these substances before the effective date of the regulations adopted by the State Board of Pharmacy to carry out the amendatory provisions of this act; and

2. Possesses ephedrine, pseudoephedrine, phenylpropanolamine, optical isomers, salts and salts of optical isomers of those substances or any combination of these substances under circumstances that are consistent with typical medicinal or household use, as indicated by factors that include, without limitation, storage location, purchase date, possession of the products in a variety of strengths, brands, types or purposes and expiration date.

Sec. 6. This act becomes effective upon passage and approval.

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