

Amendment No. 142

Assembly Amendment to Assembly Bill No. 39 (BDR 54-218)

Proposed by: Assembly Committee on Commerce and Labor

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SRT/BFG



Date: 4/8/2013

A.B. No. 39—Provides restrictions on the retail sale of certain products that are ephedrine and pseudoephedrine based. (BDR 54-218)



ASSEMBLY BILL NO. 39—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Commerce and Labor

SUMMARY—Provides restrictions on the retail sale of certain products that are
ephedrine and pseudoephedrine based. (BDR 54-218)FISCAL NOTE: Effect on Local Government: No.
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 pharmacy; making various changes concerning the sale,
transfer or acquisition of certain products that are precursors to
methamphetamine; providing penalties; and providing other matters
properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits any person, other than a pharmacy, from selling or transferring in the course of business or selling at retail certain products that contain materials that can be used to manufacture methamphetamine. (NRS 639.410) Existing law further requires a retail distributor of such products to keep the products in a locked case or cabinet or behind a store counter to prevent access to the public. (NRS 453.354) Existing law also limits the quantity of certain chemicals contained in these products that may be sold or transferred to the same person during a calendar day. (NRS 453.355) **Section 6** of this bill establishes a limit on the quantity of these chemicals that can be sold or transferred to the same person during a 30-day period.

Existing law requires a retail distributor of certain products that can be used to manufacture methamphetamine to maintain a logbook of the sales and transfers of such a product and to ensure that certain information is entered in the logbook. (NRS 453.357) **Section 2** of this bill requires the ~~Director~~ **State Board** of ~~the Department of Public Safety~~ **Pharmacy** to ~~determine whether~~ **approve** a real-time, stop sale system ~~is available and appropriate~~ for use by pharmacies in this State ~~to~~ **if the Board determines that the real-time, stop sale system: (1) is available and appropriate for use by pharmacies in this State; and (2) the system has certain capabilities and will be available free of charge. Such a system will: (1) allow pharmacies to electronically submit information before completing a sale or transfer of such a product to determine whether the sale or transfer would violate any law; (2) the Director is authorized to approve such a system if it has certain capabilities and will be available free of charge; and (2) allow law enforcement agencies to access transaction records related to the sale or transfer, or attempted sale or transfer, of a product that is a precursor to methamphetamine.**

Section 3 of this bill requires a pharmacy to use a real-time, stop sale system that is approved by the ~~Director of the Department~~ **Board**. A pharmacy is prohibited from completing a sale or transfer of a product if informed through the system that the sale or

transfer will violate any law, except in certain circumstances. ~~Section 4 of this bill requires the Director of the Department to request transaction records from the real-time, stop sale system and forward such records to law enforcement agencies in this State.~~ Section 4.5 of this bill provides that the failure of the real-time, stop sale system or the misuse of the system does not create any civil liability for the Board. Section 7 of this bill requires a retail distributor of certain products that can be used to manufacture methamphetamine, in addition to maintaining the logbook and checking the name and identification of a person seeking to obtain such a product, to consult with the real-time, stop sale system, if such a system is approved by the ~~Director~~ Board.

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

Section 1. Chapter 639 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, ~~1, 3 and 4~~ to 4.5, inclusive, of this act.

Sec. 2. *1. The ~~Director of the Department of Public Safety~~ Board shall approve a real-time, stop sale system for use by pharmacies in this State if the ~~Director~~ Board determines that a real-time, stop sale system is available and appropriate for use by pharmacies in this State. The ~~Director~~ Board shall approve a real-time, stop sale system for use by pharmacies in this State only if the ~~Director~~ Board determines that the system:*

(a) Will allow pharmacies in this State to electronically submit information to the system before the sale or transfer of a product that is a precursor to methamphetamine;

(b) Will determine whether the sale or transfer of the product would violate NRS 453.355 or any other law which prohibits the sale or transfer of a product that is a precursor to methamphetamine;

(c) Will send an alert to pharmacies to stop the sale or transfer of a product if the sale or transfer would violate NRS 453.355 or any other law which prohibits the sale or transfer of a product that is a precursor to methamphetamine; ~~and~~

(d) Will allow law enforcement agencies in this State to access from the system transaction records of any sale or transfer or attempted sale or transfer of a product that is a precursor to methamphetamine; and

(e) Is available for use by pharmacies and law enforcement agencies in this State free of charge.

2. Before approving a real-time, stop sale system, the ~~Director~~ Board must adopt regulations establishing the minimum requirements for the real-time, stop sale system. The ~~Director~~ Board shall also adopt regulations establishing the requirements for use of the real-time, stop sale system by the pharmacies and law enforcement agencies of this State.

Sec. 3. *1. After the ~~Director of the Department of Public Safety~~ Board has approved a real-time, stop sale system pursuant to section 2 of this act and adopted regulations establishing the requirements for the use of the system pursuant to that section, the ~~Director must notify the~~ Board ~~and~~ must notify each pharmacy in this State of the real-time, stop sale system that has been approved, the manner in which to establish the system in the pharmacy and the content of the regulations.*

2. Once a pharmacy receives notification pursuant to subsection 1, the pharmacy shall obtain the real-time, stop sale system and consult the system in the manner prescribed before completing any sale or transfer of a product that is a precursor to methamphetamine, except when the purchaser has a valid

1 *prescription for such a product. The pharmacy shall obtain any information*
2 *necessary from the person seeking the purchase or transfer of the product to*
3 *receive notice from the real-time, stop sale system.*

4 3. *Except as otherwise provided in this subsection, if a pharmacy receives*
5 *an alert from the real-time, stop sale system that the sale or transfer of a product*
6 *may violate NRS 453.355 or any other law which prohibits the sale or transfer of*
7 *a product that is a precursor to methamphetamine, the pharmacy must not allow*
8 *the sale or transfer to be completed. The ~~Department of Public Safety may~~*
9 *Board shall provide by regulation for exceptions to allow for the completion of a*
10 *sale or transfer ~~(despite)~~ :*

11 *(a) Despite such an alert ~~when~~ if the pharmacist or an employee of the*
12 *pharmacy has a reasonable fear of imminent bodily harm.*

13 *(b) If a pharmacy experiences a mechanical or electronic failure of the real-*
14 *time, stop sale system.*

15 4. *A pharmacy that complies with the provisions of this section is not liable*
16 *in any civil action for using the real-time, stop sale system or for any act or*
17 *omission resulting from the use of the system which is not the result of the*
18 *negligence, recklessness or deliberate misconduct of the pharmacy.*

19 5. *Failure of a person to use the real-time, stop sale system as required*
20 *pursuant to this section is a misdemeanor punishable by a fine of not more than*
21 *\$1,000.*

22 Sec. 4. ~~*The Director of the Department of Public Safety shall request*~~
23 ~~*transaction records from the real-time, stop sale system which is approved*~~
24 ~~*pursuant to section 2 of this act. The Director shall forward such transaction*~~
25 ~~*records to law enforcement agencies in this State.*~~ *(Deleted by amendment.)*

26 Sec. 4.5. *The failure of the real-time, stop sale system approved pursuant to*
27 *section 2 of this act to send an alert to a pharmacy to stop the sale or transfer of a*
28 *product that is a precursor to methamphetamine in violation of NRS 453.355, or*
29 *any other law which prohibits the sale or transfer of a product that is a precursor*
30 *to methamphetamine, does not establish a basis for any cause of action against*
31 *the Board. The Board is immune from any liability arising from or related to the*
32 *unauthorized access or misuse of any information collected by or derived from*
33 *the real-time, stop sale system approved pursuant to section 2 of this act.*

34 Sec. 5. NRS 639.400 is hereby amended to read as follows:

35 639.400 As used in this section and NRS 639.410 and 639.420 ~~§~~ *and*
36 *sections 2, 3 and 4 to 4.5, inclusive, of this act,* “product that is a precursor to
37 methamphetamine” means a product which contains ephedrine, pseudoephedrine or
38 phenylpropanolamine or the salts, optical isomers or salts of optical isomers of such
39 chemicals and may be marketed or distributed lawfully in the United States under
40 the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as a
41 nonprescription drug.

42 Sec. 6. NRS 453.355 is hereby amended to read as follows:

43 453.355 1. Except as otherwise provided in subsection 2, a retail distributor
44 shall not:

45 (a) Sell or transfer to the same person during any calendar day, without regard
46 to the number of transactions, more than 3.6 grams of ephedrine base,
47 pseudoephedrine base or phenylpropanolamine base or the salts, optical isomers or
48 salts of optical isomers of such chemicals in a product that is a precursor to
49 methamphetamine.

50 (b) *Sell or transfer to the same person during any 30-day period, without*
51 *regard to the number of transactions, more than 9 grams of ephedrine base,*
52 *pseudoephedrine base or phenylpropanolamine base or the salts, optical isomers*

1 *or salts of optical isomers of such chemicals in a product that is a precursor to*
2 *methamphetamine.*

3 (c) Sell at retail and in nonliquid form a product that is a precursor to
4 methamphetamine, including, without limitation, gel caps, unless:

5 (1) The product is packaged in blister packs, each blister containing not
6 more than two dosage units; or

7 (2) If the use of blister packs is technically infeasible, the product is
8 packaged in unit dosage packets or pouches.

9 2. The provisions of subsection 1 do not apply if ~~it~~ pursuant :

10 (a) Pursuant to 21 U.S.C. § 830(e)(3), the Attorney General of the United
11 States has determined that a product that is a precursor to methamphetamine cannot
12 be used to manufacture methamphetamine and provided by regulation that the
13 product is exempt from the provisions of 21 U.S.C. § 830(d).

14 (b) *The person who seeks to obtain a product that is a precursor to*
15 *methamphetamine has a valid prescription for the product.*

16 Sec. 7. NRS 453.357 is hereby amended to read as follows:

17 453.357 1. A retail distributor shall maintain a logbook.

18 2. At the time of ~~the~~ the sale or transfer of a product that is a precursor to
19 methamphetamine, a retail distributor shall ensure that the following information is
20 entered in the logbook:

21 (a) The name of the product sold or transferred;

22 (b) The quantity of the product sold or transferred;

23 (c) The name and address of the purchaser or transferee; ~~and~~

24 (d) The date and time of the sale or transfer ~~it~~; and

25 (e) *The type and number of the identification presented by the purchaser or*
26 *transferee pursuant to paragraph (a) of subsection 3.*

27 3. A retail distributor shall not sell or transfer a product that is a precursor to
28 methamphetamine unless:

29 (a) The prospective purchaser or transferee:

30 (1) Presents an identification card ~~that~~ which provides a photograph and
31 which is issued by the Federal Government, ~~of the United States or the~~
32 ~~Government of~~ this State or any other state, or a document that, with respect to
33 identification, is considered acceptable pursuant to 21 U.S.C. § 830(e)(1); and

34 (2) Signs his or her name in the logbook. ~~it and~~

35 (b) The retail distributor ~~determines~~ :

36 (1) *Determines* that the name entered in the logbook corresponds to the
37 name provided on the identification presented by the prospective purchaser or
38 transferee ~~it~~; and

39 (2) *Has consulted the real-time, stop sale system, if required pursuant to*
40 *section 3 of this act.*

41 4. The retail distributor must include in the logbook or otherwise post or
42 provide to a prospective purchaser or transferee a notice that entering a false
43 statement or representation in the logbook may subject the prospective purchaser or
44 transferee to criminal penalties under state law, as set forth in NRS 453.359, and
45 under federal law, as set forth in 18 U.S.C. § 1001.

46 5. A retail distributor shall maintain each entry in the logbook for not less
47 than 2 years after the date on which the entry is made.

48 6. A retail distributor shall not access, use or share the information in the
49 logbook unless the accessing, using or sharing of the information is allowed by
50 federal law or unless the purpose of accessing, using or sharing the information is
51 to ensure compliance with this chapter or to facilitate a product recall to protect the
52 health and safety of the public.

1 7. Upon a request, which is made for the purpose of enforcing the provisions
2 of NRS 453.352 to 453.359, inclusive, *or 639.400, 639.410 and 639.420 and*
3 *sections 2, 3 and 4 to 4.5, inclusive, of this act*, by a law enforcement agency of
4 this State or a political subdivision thereof or a law enforcement agency of the
5 Federal Government, a retail distributor shall disclose the information in the
6 logbook to the law enforcement agency.