**A** **BILL**

TO AMEND SECTION 44‑53‑398, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SALE AND REGULATION OF PRODUCTS CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE, SO AS TO PROVIDE THAT THESE MEDICATIONS ONLY MAY BE SOLD UPON THE PRESCRIPTION OF A PHYSICIAN OR OTHER LICENSED PERSON WHO HAS PRESCRIPTIVE AUTHORITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑398 of the 1976 Code, as last amended by Act 242 of 2010, is further amended to read:

“Section 44‑53‑398. (A) ~~Nonprescription products whose sole active ingredient is~~ Medications containing ephedrine, pseudoephedrine, or phenylpropanolamine only may be ~~offered for retail sale only if~~ sold ~~in blister packaging~~ upon the prescription of a physician or a person licensed pursuant to Title 40 who has prescriptive authority. ~~The retailer shall ensure that such products are not offered for retail sale by self‑service but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by an employee or agent of the retailer~~ A pharmacist shall store and maintain these medications in accordance with applicable state and federal law.

(B)~~(1)~~ ~~A retailer may not sell to an individual in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and a retailer may not sell to an individual in a thirty‑day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.~~

~~(2)~~ ~~An individual may not purchase in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and an individual may not purchase in a thirty‑day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.~~

~~(C)~~ ~~It is unlawful for a retailer to purchase any product containing ephedrine, pseudoephedrine, or phenylpropanolamine from any person or entity other than a manufacturer or a wholesale distributor registered by the United States Drug Enforcement Administration.~~

~~(D)(1)~~ A ~~retailer selling nonprescription products~~ pharmacist selling a medication containing ephedrine, pseudoephedrine, or phenylpropanolamine shall require the purchaser to produce a government issued photo identification showing the date of birth of the person and ~~require the purchaser to sign an electronic log showing the date and time of the transaction,~~ the person’s name and address~~, the type, issuing governmental entity, identification number, and the amount of the compound, mixture, or preparation. The retailer shall determine that the name entered in the log corresponds to the name on the identification and that the date and time entered are correct and shall enter in the log the name of the product and the quantity sold. The retailer shall ensure that the product is delivered directly into the custody of that purchaser. The log must include a notice to purchasers that entering false statements or misrepresentations in the log may subject the purchaser to criminal penalties~~.

~~(2)~~ ~~Before completing a sale of a product regulated by this section, the retailer electronically shall transmit the information entered in the log to a data collection system provided by the National Association of Drug Diversion Investigators, or a successor or similar entity. The system must collect this data in real time and generate a stop sale alert if the sale would result in a violation of subsection (B) or a federal quantity restriction, which must be assessed on the basis of sales or purchases made in any state to the extent that information is available in the data collection system. If the retailer receives a stop sale alert, the retailer must not complete the sale unless the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert. A product regulated by this section may not be sold without being reported to the data collection system unless the system is experiencing temporary technical difficulties that prevent a retailer from reporting the information to the system, and in that case, the retailer shall enter the necessary information in a written log, which must subsequently be entered into the electronic log within three business days of each business day that the electronic log was not operational. A retailer using a written log under these circumstances is immune from liability during the time the system is temporarily disabled.~~

~~(3)~~ ~~Any information entered in the electronic log that is retained by a retailer, or information maintained by a retailer pursuant to subsection (J)(2), is confidential and not a public record as defined in Section 30‑4‑20(C) of the Freedom of Information Act. A retailer or an employee or agent of a retailer who in good faith releases information in a log to federal, state, or local law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or wilful misrepresentation.~~

~~(E)~~ ~~Except as authorized by this section, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. This subsection does not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose as directed by a person licensed under Title 40 and authorized to prescribe legend drugs.~~

~~(F)~~ ~~It is unlawful for a person to enter false statements or misrepresentations on the log required pursuant to subsection (D)(1).~~

~~(G)~~ ~~This section preempts all local ordinances or regulations governing the retail sale or purchase of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine except such local ordinances or regulations that existed on or before December 31, 2004.~~

~~(H)(1)~~ ~~Except as otherwise provided in this section, it is unlawful for a retailer knowingly to violate subsection (A), (B)(1), (C), (D)(1), or (D)(2), and it is unlawful for a any person knowingly to violate subsection (B)(2), (E), or (F).~~

~~(2)~~ ~~A retailer convicted of a violation of subsection (A) or (B)(1) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than five thousand dollars and, upon conviction for a second or subsequent offense, must be fined not more than ten thousand dollars.~~

~~(3)~~ ~~A retailer convicted of a violation of subsection (C) is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than one year or fined not more than one thousand dollars, or both, and, upon conviction for a second or subsequent offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.~~

~~(4)~~ ~~A retailer convicted of a violation of subsection (D)(1), (D)(2), or (J)(2) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars and not less than five hundred dollars. Upon conviction for a second offense, a retailer must be fined not more than five thousand dollars and not less than one thousand dollars. Upon conviction for a third or subsequent offense, a person must be fined not more than ten thousand dollars and not less than five thousand dollars.~~

~~(5)~~ ~~A person convicted of a violation of subsection (B)(2) or (E) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years and fined not more than five thousand dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not less than ten thousand dollars.~~

~~(6)~~ ~~A person convicted of a violation of subsection (F), upon conviction for a first offense, is guilty of a misdemeanor and must be fined not more than one thousand dollars and, upon conviction for a second or subsequent offense, is guilty of a felony and must be fined not more than five thousand dollars.~~

~~(7)~~ ~~It is an affirmative defense to a violation of subsection (A), (C), or (D)(1) if a retailer provided the training, maintained records, and obtained employee and agent statements of agreement required by subsection (I) for all employees and agents at the retail location where the violation occurred and at the time the violation occurred.~~

~~(8)~~ ~~It is an affirmative defense to completing a sale following receipt of a stop sale alert received pursuant to subsection (D)(2) if the retailer, upon notifying the purchaser the sale cannot could not be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert.~~

~~(I)~~ ~~A retailer shall provide training on the requirements of this section to all agents and employees who are responsible for delivering the products regulated by this section into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products. A retailer shall obtain a signed, written agreement from each employee or agent that the employee or agent agrees to comply with the requirements of this section. The retailer shall maintain records demonstrating that these employees and agents have been provided this training and the documents executed by the retailer’s employees and agents agreeing to comply with this section.~~

~~(J)(1)~~ ~~The following are exempt from the electronic log requirements of this section but shall maintain a written log containing the information required to be entered in the electronic log, as provided for in subsection (D)(1):~~

~~(a)~~ ~~a retailer that only sells single dose packages of nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine;~~

~~(b)~~ ~~a pharmacy that does not have a compatible point of sale system.~~

~~(2)~~ ~~A retailer who maintains a written log pursuant to this subsection shall retain the written log for two years after which the log may be destroyed. The log must be made available for inspection within twenty‑four hours of a request made by a local, state, or federal law enforcement officer.~~

~~(3)~~ ~~A retailer who violates the requirements of maintaining a written log as provided for in subsection (J)(2) is subject to the penalties provided for in subsection (H)(4).~~

~~(K)~~ ~~The sheriff or chief of police shall monitor and determine if retailers, other than licensed pharmacies, are in compliance with the provisions of this section by ensuring that a retailer:~~

~~(1)~~ ~~is entering all sales of a product regulated by this section in an electronic log as required by this section;~~

~~(2)~~ ~~if not maintaining an electronic log, is exempt as provided for in subsection (J)(1), and is continuing to maintain the written log as provided for in subsection (J);~~

~~(3)~~ ~~is not selling products regulated by this section.~~

~~(L)~~ ~~This section does not apply to:~~

~~(1)~~ ~~pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under twelve years of age according to label instructions;~~

~~(2)~~ ~~products that the Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors; and~~

~~(3)~~ ~~a purchase of a single sales package containing not more than sixty milligrams of pseudoephedrine.~~

~~(M)(K)~~ ~~For purposes of this section, ‘retailer’ means a retail distributor, including a pharmacy, where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.~~”

SECTION 2. This act takes effect upon approval by the Governor.

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