

LEGISLATIVE BILL 20

Approved by the Governor April 14, 2011

Introduced by McCoy, 39.

FOR AN ACT relating to controlled substances; to amend sections 28-401.01 and 60-4,111.01, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-456.01, Revised Statutes Cumulative Supplement, 2010; to regulate the sale of methamphetamine precursors as prescribed; to define terms; to provide and change penalties; to provide for storage and use of information encoded on a motor vehicle operator's license or state identification card; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2010, is amended to read:

28-101 Sections 28-101 to 28-1356 and sections 3 to 7 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-401.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-401.01 Sections 28-401 to 28-456.01 and sections 3 to 7 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 3. For purposes of sections 3 to 7 of this act:

(1) Exchange means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;

(2) Methamphetamine precursor means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;

(3) Seller means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and

(4) Stop-sale alert means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.

Sec. 4. (1) Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:

(a) The name, age, and address of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor;

(b) The name of the product and quantity of product purchased;

(c) The date and time of the purchase;

(d) The name or initials of the seller who sold the product; and

(e) The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.

(2) If a seller experiences mechanical or electronic failure of the electronic logging equipment on the sales end of the transaction or a failure of the exchange and is unable to comply with subsection (1) of this section, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply with subsection (1) of this section.

(3) The Attorney General may grant a waiver exempting a seller from compliance with subsection (1) of this section upon a showing of good cause by the seller that he or she is otherwise unable to submit log information by electronic means, including, but not limited to, any financial, technological, or other reason which would place an undue burden on the seller, as established by the Attorney General.

(4) Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present.

(5) This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a pharmacist licensed under the Uniform Credentialing Act.

Sec. 5. As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange

through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.

Sec. 6. A seller utilizing in good faith sections 3 to 7 of this act shall be immune from any civil cause of action based upon an act or omission in carrying out such sections.

Sec. 7. Beginning January 1, 2013, a seller that knowingly fails to submit methamphetamine precursor information to the exchange as required by sections 3 to 7 of this act or knowingly submits incorrect information to the exchange shall be guilty of a Class IV misdemeanor.

Sec. 8. Section 28-456.01, Revised Statutes Cumulative Supplement, 2010, is amended to read:

28-456.01 (1) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of ~~an infraction as defined in section 29-431,~~ a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

(2) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

Sec. 9. Section 60-4,111.01, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,111.01 (1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 3 to 7 of this act, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 3 to 7 of this act and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 3 of this act.

(c) The retailer or seller shall utilize software that stores

only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than ~~the age and identification number~~ authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

~~(b)~~ (e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Sec. 10. This act becomes operative on January 1, 2012.

Sec. 11. Original sections 28-401.01 and 60-4,111.01, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-456.01, Revised Statutes Cumulative Supplement, 2010, are repealed.