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SENATE BILL NO. 294

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 18, 2012)

(Patrons Prior to Substitute—Senators Lucas and Stuart [SB 14])

A BILL to amend the Code of Virginia by adding in Chapter 7 of Title 18.2 an article numbered 1.2, consisting of sections numbered 18.2-265.6 through 18.2-265.18, and to repeal § 18.2-248.8 of the Code of Virginia, relating to the sale of methamphetamine precursors; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 7 of Title 18.2 an article numbered 1.2, consisting of sections numbered 18.2-265.6 through 18.2-265.18, as follows:

Article 1.2.

Sale of Ephedrine or Related Compounds.

§ 18.2-265.6. Definitions.

As used in this article, unless the context requires a different meaning:

"Department" means the Department of State Police.

"Ephedrine or related compounds" means ephedrine and pseudoephedrine base or their salts, isomers, or salts of isomers.

"Pharmacy" means any establishment or institution from which drugs, medicines, or medicinal chemicals are dispensed or offered for sale or on which a sign is displayed bearing the words "apothecary," "druggist," "drugs," "drug store," "drug sundries," "medicine store," "pharmacist," "pharmacy," or "prescriptions filled" or any similar words intended to indicate that the practice of pharmacy is being conducted pursuant to a license issued under Chapter 33 (§ 54.1-3300 et seq.) of Title 54.1.

"Retail distributor" means an entity licensed to conduct business in the Commonwealth that offers for sale to the public at a retail outlet any nonprescription compound, mixture, or preparation containing ephedrine or related compounds.

"System" or "electronic system" means a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or related compounds.

§ 18.2-265.7. Sale of the methamphetamine precursors ephedrine or related compounds; penalty.

A. The sale of any product containing ephedrine or related compounds sold by a pharmacy or retail distributor shall be limited to no more than 3.6 grams per day and 9 grams per 30-day period per individual customer. The limits shall apply to the total amount of base ephedrine or related compounds contained in the products and not to the overall weight of the products.

B. Ephedrine or related compounds shall only be displayed for sale behind a store counter that is not accessible to consumers or in a locked case that requires assistance by a store employee for customer access.

C. Any person purchasing, receiving, or otherwise acquiring ephedrine or related compounds shall, prior to taking possession, present photo identification issued by a government or an educational institution.

D. The pharmacy or retail distributor shall maintain a written log or electronic system with the purchaser's name and address, birth date, and signature; the product name and quantity sold; and the date and time of the transaction. Unless exempt under subsection B of § 18.2-265.8 or 18.2-265.11, the pharmacy or retail distributor shall use the electronic recordkeeping and monitoring system to report all nonprescription sales of any product containing ephedrine or related compounds.

E. The purchaser shall sign the record acknowledging an understanding of the applicable sales limit and that providing false statements or misrepresentations may subject the purchaser to criminal penalties under § 1001 of Title 18 of the United States Code.

F. The pharmacy or retail distributor shall maintain records of all sales required to be entered into the electronic system or written log for a period of two years from the date of the last entry.

G. The provisions of this article do not apply to sales of ephedrine or related compounds pursuant to a valid prescription.

H. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.

§ 18.2-265.8. Real-time electronic recording of sales of ephedrine or related compounds; memorandum of understanding.

A. The Department shall enter into a memorandum of understanding with an appropriate entity to establish the Commonwealth's participation in a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or related compounds. The memorandum of understanding shall include the following:

60 1. A real-time electronic recordkeeping and monitoring system shall be provided at no charge to the
61 Commonwealth or to participating pharmacies and retail distributors and shall be approved by the
62 Department.

63 2. The system shall provide, at no charge to participating pharmacies and retail distributors,
64 appropriate training, 24-hour online support, and a toll-free telephone help line that is staffed 24 hours
65 a day.

66 3. The system shall be able to communicate in real time with similar systems operated in other states
67 and the District of Columbia and similar systems containing information submitted by more than one
68 state.

69 4. The system shall comply with information exchange standards adopted by the National Information
70 Exchange Model.

71 5. The system shall include a stop sales alert, which shall be a notification that completion of the
72 sale would result in the seller or purchaser violating the quantity limits set forth in § 18.2-265.7, with
73 an override function that may be used by a pharmacy or retail distributor under the circumstances set
74 forth in § 18.2-265.9 and shall record each instance in which the override function is utilized.

75 6. The system shall provide for the recording of the following:

76 a. The date and time of the transaction;

77 b. The name, address, date of birth, and photo identification number of the purchaser; the type of
78 identification; and the government or educational institution of issuance;

79 c. The number of packages purchased; the total number of grams of ephedrine or related compounds
80 per package; and the name of the compound, mixture, or preparation containing ephedrine or related
81 compounds; and

82 d. The signature of the purchaser or unique number connecting the transaction to a paper signature
83 maintained at the retail premises.

84 7. The system shall ensure that submitted data is retained within the system for at least two years
85 from the date of submission.

86 B. The Department shall provide a process for a pharmacy or retail distributor to apply for, obtain,
87 and periodically renew an exemption from the requirement to report transactions to the electronic
88 system if the pharmacy or retail distributor lacks broadband access or maintains a sales volume of less
89 than 72 grams of ephedrine or related compounds in a 30-day period.

90 C. The Superintendent of State Police shall promulgate regulations pursuant to the Administrative
91 Process Act (§ 2.2-4000 et seq.) for the implementation of this section. Regulations adopted under this
92 section shall be deemed a customary police function for purposes of subdivision B 6 of § 2.2-4002.

93 § 18.2-265.9. Stop sales alerts; interruption of electronic system.

94 A. A pharmacy or retail distributor shall not complete the sale if the system generates a stop sales
95 alert unless the individual distributing the ephedrine or related compound has a reasonable fear of
96 imminent bodily harm if the sale is not completed.

97 B. In the event of a mechanical or electronic interruption of the system, the pharmacy or retail
98 establishment shall maintain a written log of sales of ephedrine or related compounds until the system is
99 restored. The information written in the log shall be transmitted to the system as soon as practicable
100 after the system is restored.

101 § 18.2-265.10. Exemption from participation in electronic system; requirement to maintain log.

102 Any pharmacy or retail distributor that has been granted an exemption from participation in the
103 system pursuant to subsection B of § 18.2-265.8 shall forward to the Department every seven days by
104 fax or electronic means a legible copy of the log required by § 18.2-265.7.

105 § 18.2-265.11. Exemption from participation in electronic system and maintenance of a written log.

106 A. The following entities shall not be required to participate in the electronic system and shall not be
107 required to maintain a written log:

108 1. Licensed manufacturers that manufacture and lawfully distribute products in the channels of
109 commerce.

110 2. Wholesalers that lawfully distribute products in the channels of commerce.

111 3. Inpatient pharmacies of health care facilities licensed in the Commonwealth.

112 4. Licensed long-term health care facilities.

113 5. Government-operated health care clinics or departments or centers.

114 6. Physicians who dispense drugs pursuant to § 54.1-3304.

115 7. Pharmacies located in correctional facilities.

116 8. Government-operated or industry-operated medical facilities serving the employees of the
117 Commonwealth or local or federal government.

118 B. Purchases of ephedrine or related compounds pursuant to a valid prescription are not required to
119 be reported to the system or entered into a written log.

120 C. The sale of a single package containing no more than 60 milligrams of ephedrine or related
121 compounds to an individual is not required to be reported to the system or entered into a log provided

it is an isolated sale.

§ 18.2-265.12. Authority to access data, records, and reports.

The Department or other law-enforcement agency of the Commonwealth or any federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data, records, and reports regarding the sale of ephedrine or related compounds. In addition, such information may be accessed if relevant to proceedings in any court, investigatory grand jury, or special grand jury that has been impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.

The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of this section. Regulations adopted under this section shall be deemed a customary police function for purposes of subdivision B 6 of § 2.2-4002.

§ 18.2-265.13. Confidentiality of data in possession of Department.

All data, records, and reports related to the sale of ephedrine or related compounds to retail customers and any abstracts of such data, records, and reports that are in the possession of the Department pursuant to this article shall be confidential and exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

§ 18.2-265.14. Prohibition on disclosure of information by entity operating the system.

The entity operating the system pursuant to the memorandum of understanding with the Department shall not use or disclose the information collected on behalf of the Department from a pharmacy or retail distributor for any purpose other than (i) to ensure compliance with this article or the federal Combat Methamphetamine Epidemic Act of 2005, (ii) to comply with the United States government or a political subdivision thereof for law-enforcement purposes pursuant to state or federal law, or (iii) to facilitate a product recall necessary to protect public health and safety.

§ 18.2-265.15. Prohibition on disclosure of information by pharmacy or retail distributor; civil immunity.

A pharmacy or retail distributor that sells any product containing ephedrine or related compounds shall not use or disclose the information in the system or a written log for any purpose other than (i) to ensure compliance with this article or the federal Combat Methamphetamine Epidemic Act of 2005, (ii) to comply with the United States government or a political subdivision thereof for law-enforcement purposes pursuant to state or federal law, or (iii) to facilitate a product recall necessary to protect public health and safety. A pharmacy or retail distributor shall report information in the written log or electronic system to law-enforcement personnel upon request, and any pharmacy or retail distributor that in good faith releases such information to federal, state, or local law-enforcement officers, or to any person acting on behalf of such officers, shall be immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

§ 18.2-265.16. Compliance with statutory provisions; civil immunity.

Absent gross negligence, recklessness, or willful misconduct, any pharmacy or retail distributor utilizing the system or written log in compliance with this article shall be immune from civil liability as a result of actions or omissions in carrying out such statutory duties.

§ 18.2-265.17. Exemption of information systems from provisions related to the Virginia Information Technologies Agency.

The provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 shall not apply to this article.

§ 18.2-265.18. Failure to report certain sales; penalty.

Any person subject to the recordkeeping and reporting requirements set forth in this article that willfully fails to report nonprescription sales of ephedrine or related compounds is guilty of a Class 1 misdemeanor.

2. That § 18.2-248.8 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2013.