

## CHAPTER 2010-191

### Committee Substitute for Committee Substitute for Senate Bill No. 1050

An act relating to the sale of ephedrine or related compounds; amending s. 893.1495, F.S.; providing a definition; prohibiting obtaining or delivering to an individual in a retail sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds in excess of specified amounts; revising provisions relating to retail display of products containing ephedrine or related compounds; revising provisions relating to the training of retail employees; requiring a purchaser of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine or related compounds to meet specified requirements; requiring the use of an electronic recordkeeping mechanism approved by the Department of Law Enforcement for such transactions to record specified information; providing exemptions from the electronic recordkeeping requirement; revising provisions concerning local ordinances or regulations; providing exemptions for certain entities; prohibiting any retailer or entity that collects information on behalf of a retailer from accessing or using the information, except for law enforcement purposes or to facilitate a product recall for public health and safety; providing limited civil immunity for the release of information to law enforcement officers; conforming provisions governing criminal penalties for violations; requiring the Department of Law Enforcement to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 893.1495, Florida Statutes, is amended to read:

893.1495 Retail sale of ephedrine and related compounds.—

(1) For purposes of this section, the term “ephedrine or related compounds” means ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(2)(1) A No person may not shall knowingly obtain or deliver to an individual in any single retail over-the-counter sale any number of packages of any nonprescription compound, mixture, or preparation drug containing a sole active ingredient that contains a combined total of more than 9 base grams of ephedrine or related compounds in excess of the following amounts:

(a) In any single day, any number of packages that contain a total of 3.6 grams of ephedrine or related compounds;

(b) In any single retail, over-the-counter sale, three packages, regardless of weight, containing ephedrine or related compounds; or

(c) In any 30-day period, in any number of retail, over-the-counter sales, a total of 9 grams or more of ephedrine or related compounds, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single retail over-the-counter sale, regardless of weight, containing any such sole active ingredient.

(3)(2) A No person may not shall knowingly display and offer for retail sale packages of any nonprescription compound, mixture, or preparation containing drug having a sole active ingredient of ephedrine or related compounds, pseudoephedrine, phenylpropanolamine, or any of their salts or optical isomers other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public.

(4)(3) A No person who is the owner or primary operator of a retail outlet where any nonprescription compound, mixture, or preparation containing ephedrine or related compounds is, pseudoephedrine, or phenylpropanolamine products are available for sale may not shall knowingly allow an employee to engage in the retail sale of such compound, mixture, or preparation products unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such compounds, mixtures, or preparations products.

(5)(a) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine or related compounds must:

1. Be at least 18 years of age.
2. Produce a government-issued photo identification showing his or her name, date of birth, address, and photo identification number or an alternative form of identification acceptable under federal regulation 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).
3. Sign his or her name on a record of the purchase, either on paper or on an electronic signature capture device.

(b) The Department of Law Enforcement shall approve an electronic recordkeeping system for the purpose of recording and monitoring the real-time purchase of products containing ephedrine or related compounds and for the purpose of monitoring this information in order to prevent or investigate illegal purchases of these products. The approved electronic recordkeeping system shall be provided to a pharmacy or retailer without any additional cost or expense. A pharmacy or retailer may request an exemption from electronic reporting from the Department of Law Enforcement if the pharmacy or retailer lacks the technology to access the electronic recordkeeping system and such pharmacy or retailer maintains a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period. The electronic recordkeeping system shall record the following:

1. The date and time of the transaction.

2. The name, date of birth, address, and photo identification number of the purchaser, as well as the type of identification and the government of issuance.

3. The number of packages purchased, the total grams per package, and the name of the compound, mixture, or preparation containing ephedrine or related compounds.

4. The signature of the purchaser, or a unique number relating the transaction to a paper signature maintained at the retail premises.

(c) The electronic recordkeeping system shall provide for:

1. Real-time tracking of nonprescription over-the-counter sales under this section.

2. The blocking of nonprescription over-the-counter sales in excess of those allowed by the laws of this state or federal law.

(6) A nonprescription compound, mixture, or preparation containing any quantity of ephedrine or related compounds may not be sold over the counter unless reported to an electronic recordkeeping system approved by the Department of Law Enforcement. This subsection does not apply if the pharmacy or retailer has received an exemption from the Department of Law Enforcement under paragraph (5)(b).

(7) Prior to completing a transaction, a pharmacy or retailer distributing products containing ephedrine or related compounds to consumers in this state shall submit all required data into an electronic recordkeeping system approved by the Department of Law Enforcement at the point of sale or through an interface with the electronic recordkeeping system, unless granted an exemption by the Department of Law Enforcement pursuant to paragraph (5)(b).

(8) The data submitted to the electronic recordkeeping system must be retained within the system for no less than 2 years following the date of entry.

(9)(4) The requirements of this section relating to the marketing, sale, or distribution of products containing ephedrine or related compounds, pseudoephedrine, or phenylpropanolamine products shall supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.

(10) This section does not apply to:

(a) Licensed manufacturers manufacturing and lawfully distributing products in the channels of commerce.

(b) Wholesalers lawfully distributing products in the channels of commerce.

(c) Health care facilities licensed under chapter 395.

(d) Licensed long-term care facilities.

(e) Government-operated health departments.

(f) Physicians' offices.

(g) Publicly operated prisons, jails, or juvenile correctional facilities or private adult or juvenile correctional facilities under contract with the state.

(h) Public or private educational institutions maintaining health care programs.

(i) Government-operated or industry-operated medical facilities serving employees of the government or industry operating them.

(11)(5) Any individual who violates subsection (1), subsection (2), or subsection (3), or subsection (4) commits:

(a) For a first offense, a misdemeanor of the second degree, punishable as provided in s. 775.083.

(b) For a second offense, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For a third or subsequent offense, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) Information contained within the electronic recordkeeping system shall be disclosed in a manner authorized by state or federal law. Any retailer or entity that collects information on behalf of a retailer as required by the Combat Methamphetamine Epidemic Act of 2005 and this section may not access or use that information, except for law enforcement purposes pursuant to state or federal law or to facilitate a product recall for public health and safety.

(13) A person who sells any product containing ephedrine or related compounds who in good faith releases information under this section to federal, state, or local law enforcement officers, or any person acting on behalf of such an officer, is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(14) The Department of Law enforcement shall contract or enter into a memorandum of understanding, as applicable, with a private third-party administrator to implement the electronic recordkeeping system required by this section.

(15) The Department of Law Enforcement shall adopt rules necessary to implement this section.

Section 2. This act shall take effect July 1, 2010, and shall be implemented by January 1, 2011.

Approved by the Governor June 3, 2010.

Filed in Office Secretary of State June 3, 2010.