HOUSE BILL 1565

By Powers

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4; Title 53, Chapter 10; Title 53, Chapter 11 and Title 63, Chapter 10, relative to products containing ephedrine or pseudoephedrine.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-410, is amended by adding the following as a new subsection:

( ) Any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine.

SECTION 2. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the section and substituting instead the following:

(a) Except as provided in this section, any product or products that contain any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy upon presentment of a valid prescription issued by a licensed physician, certified physician assistant, or nurse authorized pursuant to § 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician and who meets the requirements pursuant to § 63-7-207(14). The provisions of patient education and counseling as a part of the practice of pharmacy under title 63, chapter 10, shall be required when a product is issued under this subsection (a).

(b)

(1) A product or category of products that contain any immediate methamphetamine precursor shall be exempt from the requirements of

subsection (a), if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The board of pharmacy, in consultation with the Tennessee bureau of investigation, shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors:

(A) The ease with which the product can be converted to methamphetamine, including the presence or absence of a “molecular lock” completely preventing a product's use in methamphetamine manufacture;

(B) The ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion or other form; and

(C) Any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3)

(A) The board of pharmacy shall maintain a public list of the exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list. The list shall include, but not be limited to, products in the form of gel capsules and liquid preparations that contain any immediate methamphetamine precursor.

(B) “Gel capsule” means any soft gelatin liquid-filled capsule that contains a liquid suspension, that, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethelyne glycol, and propylene glycol, along with other liquid substances. Regardless of the product

manufacturer's labeling, a gelatin covered solid shall not mean a “gel capsule” under this subdivision (b)(3).

(c) Unless a person presents a valid prescription issued by a licensed physician, certified physician assistant or nurse authorized pursuant to § 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician and who meets the requirements pursuant to § 63-7-207(14), a pharmacy shall not sell a nonexempt product containing any immediate methamphetamine precursor to the person.

(d) Nonexempt products containing an immediate methamphetamine precursor shall be maintained in the same manner as other controlled substances.

(e) A violation of this section is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, the violation shall be reported to the board of pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a) and such violation shall be treated as provided by law for other violations of dispensing a controlled substance without a valid prescription.

(e)

(1) By January 1, 2012, each pharmacy in this state shall have in place and operational all equipment necessary to access and use the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). The NPLEx system shall be available for access and use free of charge to the pharmacies and this state.

(2) Before completing a sale of a product containing pseudoephedrine or ephedrine not otherwise excluded from the record keeping requirement, a

pharmacy shall electronically submit the required information to the NPLEx administered by the NADDI.

(3) Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the electronic sales tracking system in accordance with this subsection (e) shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection (e) and shall be immune from liability to any third party unless the retailer has violated this subsection (e) in relation to a claim brought for such violation. This subsection (e) shall not apply to a person who obtains the product or products pursuant to a valid prescription.

(4) The data entered into, stored and maintained by the NPLEx may only be used by law enforcement officials, healthcare professionals and pharmacists and only for controlling the sale of methamphetamine precursors.

(5) If, for any reason, the NPLEx administered by the NADDI is no longer the system used in this state to track the sale of methamphetamine precursors, whether because the system no longer functions, is no longer in existence, is no longer offered to the state without cost, or is otherwise no longer available, each pharmacy shall switch to and commence using the Tennessee Methamphetamine Information System (TMIS), as soon as the equipment necessary to access and use the system is made available at no charge to the pharmacy. TMIS shall be available for access and use free of charge to the pharmacies.

(f) There shall be no protocol or procedure mandated by any individual or corporate entity that interferes with the pharmacist's professional duty to counsel and evaluate the patient's appropriate pharmaceutical needs and the exercise of

the pharmacist's professional judgment as a part of the practice of pharmacy under title 63, chapter 10, as to whether it is appropriate to dispense medication.

(g) No pharmacist shall incur any civil liability if the pharmacist approves a sale and the person later uses the nonexempt product unlawfully if the pharmacist followed the requirements of this section and had no reason to believe the purchaser would unlawfully use the product. Nor shall a pharmacist incur any civil liability if the pharmacist refuses to sell a nonexempt product to a customer, even if it is later determined that the person did not intend to use the nonexempt product unlawfully.

(h) Notwithstanding § 67-6-320, the exemption from sales and use tax for prescription drugs shall not apply to nonexempt products containing any immediate methamphetamine precursor. Such nonexempt products shall continue to be taxed in the same manner as they were on June 30, 2014.

(i) Notwithstanding any law to the contrary, no individual or group plan of health insurance entered into, offered or renewed on or after July 1, 2014, shall provide coverage or payment for any nonexempt product containing any immediate methamphetamine precursor for which a pharmacist-generated prescription is required by this section.

(j) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

SECTION 3. Tennessee Code Annotated, Title 63, Chapter 10, Part 2, is amended by adding the following as a new section:

63-10-217. A pharmacist is authorized to dispense an immediate methamphetamine precursor upon oral prescription of the pharmacist, reduced promptly to writing and filed by the pharmacy. This pharmacist-generated prescription may not

exceed a fifteen-day supply of the product for a daily dosage of two hundred forty (240) milligrams. Prescriptions shall be retained and filed in conformity with the requirements of §§ 53-11-306 and 39-17-431. A pharmacist may dispense an immediate methamphetamine precursor only pursuant to this section or § 39-17-431.

SECTION 4. This act shall take effect July 1, 2014, the public welfare requiring it.