

House Bill 2648

Sponsored by Representative POST, Senator DEMBROW; Representatives BOSHART DAVIS, BREESE-IVERSON, DEXTER, EVANS, HAYDEN, LIVELY, MEEK, MOORE-GREEN, NOBLE, OWENS, SANCHEZ, SMITH DB, SMITH G, ZIKA, Senators FREDERICK, KNOPP (at the request of former Representative Cheri Helt) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows pharmacist or pharmacy technician to transfer drug containing pseudoephedrine without prescription to person who is at least 18 years of age and presents person's valid government-issued photo identification. Requires pharmacist or pharmacy technician, prior to transfer, to submit specified information into electronic system designed to prevent illegal transfer of drugs containing pseudoephedrine. Requires pharmacist or pharmacy technician to record specified information about transfer of drug containing pseudoephedrine. Specifies maximum amount of pseudoephedrine that person may receive without prescription. Establishes storage requirements for drug containing pseudoephedrine. Clarifies that measure does not apply to drugs transferred pursuant to prescription. Punishes violation by 364 days' imprisonment, \$6,250 fine, or both.

Becomes operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to pseudoephedrine; creating new provisions; amending ORS 475.950; and prescribing an
3 effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 475.005 to**
6 **475.285.**

7 **SECTION 2. (1) As used in this section, "pharmacist," "pharmacy" and "pharmacy tech-**
8 **nician" have the meanings given those terms in ORS 689.005.**

9 **(2) A pharmacist or pharmacy technician may transfer a drug containing**
10 **pseudoephedrine or ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or**
11 **ephedrine without a prescription from a practitioner to a person who is 18 years of age or**
12 **older and who provides to the pharmacist or pharmacy technician the person's valid**
13 **government-issued photo identification.**

14 **(3) Prior to the transfer of a drug described in subsection (2) of this section, a pharmacist**
15 **or pharmacy technician shall submit the following information to the electronic system de-**
16 **scribed in subsection (6) of this section:**

17 **(a) The date and time of the transfer;**

18 **(b) The name, address and date of birth of the person to whom the transfer will be made;**

19 **(c) The form of government-issued photo identification and identification number of the**
20 **person to whom the transfer will be made;**

21 **(d) The name of the government agency that issued the photo identification; and**

22 **(e) The name of the drug that will be transferred and the amount of pseudoephedrine or**
23 **ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine, specified**
24 **in grams, to be transferred.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) If, after receiving the information submitted under subsection (3) of this section, the
 2 electronic system generates an alert to not proceed with the transfer, the pharmacist or
 3 pharmacy technician may not transfer the drug described in subsection (2) of this section
 4 to the person, except as provided in subsection (6) of this section.

5 (5)(a) Upon transferring a drug described in subsection (2) of this section, the pharmacist
 6 or pharmacy technician shall require the person to whom the drug is transferred to sign an
 7 electronic or written log that shows the date of the transfer, the name of the person to
 8 whom the transfer is made and the amount transferred of pseudoephedrine or ephedrine or
 9 a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine, specified in grams.

10 (b) The log described in this subsection must be retained at the pharmacy where the
 11 transfer was made for at least two years from the date of the transaction.

12 (c) A law enforcement agency may obtain information contained in a log described in this
 13 subsection through a lawfully issued subpoena accepted by the State Board of Pharmacy. The
 14 board shall accept a lawfully issued subpoena under this paragraph, and shall adopt rules to
 15 carry out this paragraph. The board may designate a third party vendor as the custodian of
 16 records, including of a log described in this subsection.

17 (6)(a) For purposes of tracking the transfer of drugs described in subsection (2) of this
 18 section, a pharmacy shall use an electronic system designed to prevent illegal transfer of
 19 drugs described in subsection (2) of this section. The electronic system must:

20 (A) Be capable of tracking transfers nationwide in real time;

21 (B) Be capable of generating an alert described in subsection (4) of this section;

22 (C) Allow a pharmacist to override an alert described in subsection (4) of this section if,
 23 in the discretion of the pharmacist, the transfer is necessary to protect the person to whom
 24 the transfer will be made from imminent bodily harm;

25 (D) Be able to communicate in real time with similar systems operated in other states
 26 and the District of Columbia, including with similar systems that contain information sub-
 27 mitted by more than one state;

28 (E) For each transfer, allow for the recording of:

29 (i) The information described in subsection (3) of this section;

30 (ii) The number of packages of the drug transferred;

31 (iii) The total amount of pseudoephedrine or ephedrine or a salt, isomer or salt of an
 32 isomer of pseudoephedrine or ephedrine transferred, specified in grams;

33 (iv) The name of the drug transferred;

34 (v) Either the signature of the person to whom the drug is transferred or a unique
 35 number connecting the transfer transaction to an electronic or written log described in
 36 subsection (5) of this section; and

37 (vi) The name or initials of the pharmacist or pharmacy technician who transferred the
 38 drug;

39 (F) Be free of charge to a pharmacy;

40 (G) Be accessible at no charge to law enforcement and to other authorized personnel, as
 41 determined by the board, through an online portal or at the pharmacy;

42 (H) Retain information submitted for at least two years from the date of transaction; and

43 (I) Be accompanied by training, 24-hour online support and a toll-free support telephone
 44 hotline.

45 (b) A pharmacist who uses the override function described in this subsection shall record

1 **in the electronic system the use of the override.**

2 **(7) A drug described in subsection (2) of this section must be:**

3 **(a) Transferred from behind a pharmacy counter; and**

4 **(b) Stored behind the pharmacy counter in an area that is closed to the public.**

5 **(8) A person, other than a pharmacy, may not receive more than 3.6 grams per transfer,**
 6 **or more than nine grams in a 30-day period, of pseudoephedrine or ephedrine or a salt,**
 7 **isomer or salt of an isomer of pseudoephedrine or ephedrine.**

8 **(9) This section does not apply to a drug that contains pseudoephedrine or ephedrine or**
 9 **a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine when the drug is trans-**
 10 **ferred pursuant to a prescription.**

11 **(10) In addition to rules adopted under subsection (5) of this section, the board may adopt**
 12 **other rules as necessary to carry out this section.**

13 **(11) Violation of this section, or a rule adopted pursuant to this section, is a Class A**
 14 **misdemeanor.**

15 **SECTION 3.** ORS 475.950 is amended to read:

16 475.950. (1) A person commits the offense of failure to report a precursor substances transaction
 17 if the person does any of the following:

18 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
 19 (3)(a) to (hh) and (oo) and does not, at least three days before delivery of the substance, submit to
 20 the Department of State Police a report that meets the reporting requirements established by rule
 21 under ORS 475.945.

22 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does
 23 not, within 10 days after receipt of the substance, submit to the *[Department of State Police]* **de-**
 24 **partment** a report that meets the reporting requirements established by rule under ORS 475.945.

25 (2) This section does not apply to any of the following:

26 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
 27 upon the prescription of a physician licensed under ORS chapter 677, physician assistant licensed
 28 under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390,
 29 naturopathic physician licensed under ORS chapter 685, dentist or veterinarian.

30 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
 31 stance to patients upon prescription.

32 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-
 33 nishes a precursor substance to a licensed pharmacy, physician licensed under ORS chapter 677,
 34 physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS
 35 678.375 to 678.390, naturopathic physician licensed under ORS chapter 685, dentist or veterinarian
 36 for distribution to patients upon prescription.

37 (d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner
 38 if the person complies with the alternate reporting requirements.

39 (e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance
 40 from a licensed pharmacist, physician licensed under ORS chapter 677, physician assistant licensed
 41 under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390,
 42 naturopathic physician licensed under ORS chapter 685, dentist or veterinarian pursuant to a pre-
 43 scription.

44 (f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in
 45 compliance with ORS 475.973 **or section 2 of this 2021 Act.**

1 (g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person
2 with whom the practitioner has a professional relationship.

3 (h) Any person who obtains a precursor substance from a practitioner, as defined in ORS
4 475.005, with whom the person has a professional relationship.

5 (i) Any person who sells or transfers an isomer of a precursor substance, unless it is an optical
6 isomer.

7 (3) Penalties related to providing false information on a report required under this section are
8 provided under ORS 475.965.

9 (4) The Department of State Police and any law enforcement agency may inspect and remove
10 copies of the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a
11 precursor substance during the normal business hours of the retail or wholesale distributor or may
12 require the retail or wholesale distributor to provide copies of the records.

13 (5) Failure to report a precursor substances transaction is a Class A misdemeanor.

14 **SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 475.950 by section 3**
15 **of this 2021 Act apply to conduct occurring on and after the operative date specified in sec-**
16 **tion 5 of this 2021 Act.**

17 **SECTION 5. (1) Section 2 of this 2021 Act and the amendments to ORS 475.950 by section**
18 **3 of this 2021 Act become operative on January 1, 2022.**

19 **(2) The State Board of Pharmacy may take any action before the operative date specified**
20 **in subsection (1) of this section that is necessary to enable the board to exercise, on and**
21 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
22 **and powers conferred on the board by section 2 of this 2021 Act and the amendments to ORS**
23 **475.950 by section 3 of this 2021 Act.**

24 **SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021**
25 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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