

SENATE BILL 985

By McNally

AN ACT to amend Tennessee Code Annotated, Title 39,  
Chapter 17, Part 4, relative to immediate  
methamphetamine precursor.

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

SECTION 1. Tennessee Code Annotated, Section 39-17-431, is amended by deleting the section in its entirety and substituting instead the following:

(a) Except as provided in this section, any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy upon presentment of a valid pharmacist-generated prescription order written by a pharmacist under § 63-10-206. The provisions of the patient education and counseling as a part of the practice of pharmacy 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) 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. The term “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, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin covered solid does not constitute a “gel capsule” under the provisions of this subdivision (b)(3).

(c) Unless a person presents a valid pharmacist-generated prescription order pursuant to § 63-10-206, a pharmacy shall not sell or dispense a nonexempt product containing any immediate methamphetamine precursor to the person.

(d) 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 to whether it is appropriate to dispense medication.

(e) 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.

(f) Notwithstanding the provisions of § 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, 2013.

(g) Notwithstanding any law to the contrary, no individual or group plan of health insurance entered into, offered or renewed on or after July 1, 2013, 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.

(h) 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 involving the dispensing of drugs for which a valid prescription is required.

(i) This section shall supersede any local laws or ordinances currently regulating the sale of nonexempt products containing any immediate methamphetamine precursor that are covered by this section.

SECTION 2. This act shall take effect on July 1, 2013, the public welfare requiring it, and shall apply to all nonexempt products containing any immediate methamphetamine precursor sold or dispensed on or after such date.