Judiciary II - Criminal Law Committee

Filed: 3/28/2006

AMENDMENT TO SENATE BILL 2391

AMENDMENT NO. _____. Amend Senate Bill 2391 on page 1, by inserting after line 3 the following:

"Section 2. The Illinois Controlled Substances Act is amended by changing Section 312 as follows:

(720 ILCS 570/312) (from Ch. 56 1/2, par. 1312)

Sec. 312. Requirements for dispensing controlled substances.

(a) A practitioner, in good faith, may dispense a Schedule II controlled substance, which is a narcotic drug listed in Section 206 of this Act; or which contains any quantity of amphetamine or methamphetamine, their salts, optical isomers or salts of optical isomers; phenmetrazine and its salts; or pentazocine; and Schedule III, IV, or V controlled substances to any person upon a written prescription of any prescriber, dated and signed by the person prescribing on the day when issued and bearing the name and address of the patient for whom, or the owner of the animal for which the controlled substance is dispensed, and the full name, address and registry number under the laws of the United States relating to controlled substances of the prescriber, if he is required by those laws to be registered. If the prescription is for an animal it shall state the species of animal for which it is ordered. The practitioner filling the prescription shall write

the date of filling and his own signature on the face of the written prescription. The written prescription shall be retained on file by the practitioner who filled it or pharmacy in which the prescription was filled for a period of 2 years, so as to be readily accessible for inspection or removal by any officer or employee engaged in the enforcement of this Act. Whenever the practitioner's or pharmacy's copy of any prescription is removed by an officer or employee engaged in the enforcement of this Act, for the purpose of investigation or as evidence, such officer or employee shall give to the practitioner or pharmacy a receipt in lieu thereof. A prescription for a Schedule II controlled substance shall not be filled more than 7 days after the date of issuance. A written prescription for Schedule III, IV or V controlled substances shall not be filled or refilled more than 6 months after the date thereof or refilled more than 5 times unless renewed, in writing, by the prescriber.

(b) In lieu of a written prescription required by this Section, a pharmacist, in good faith, may dispense Schedule III, IV, or V substances to any person either upon receiving a facsimile of a written, signed prescription transmitted by the prescriber or the prescriber's agent or upon a lawful oral prescription of a prescriber which oral prescription shall be reduced promptly to writing by the pharmacist and such written memorandum thereof shall be dated on the day when such oral prescription is received by the pharmacist and shall bear the full name and address of the ultimate user for whom, or of the owner of the animal for which the controlled substance is dispensed, and the full name, address, and registry number under the law of the United States relating to controlled substances of the prescriber prescribing if he is required by those laws to be so registered, and the pharmacist filling such oral prescription shall write the date of filling and his own signature on the face of such written memorandum thereof. The

facsimile copy of the prescription or written memorandum of the oral prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of not less than two years, so as to be readily accessible for inspection by any officer or employee engaged in the enforcement of this Act in the same manner as a written prescription. The facsimile copy of the prescription or oral prescription and the written memorandum thereof shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed, in writing, by the prescriber.

(c) Except for any non-prescription targeted methamphetamine precursor regulated by ~~as defined in~~ the Methamphetamine Precursor Control Act, a controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose and not for the purpose of evading this Act, and then:

(1) only personally by a person registered to dispense a Schedule V controlled substance and then only to his patients, or

(2) only personally by a pharmacist, and then only to a person over 21 years of age who has identified himself to the pharmacist by means of 2 positive documents of identification.

(3) the dispenser shall record the name and address of the purchaser, the name and quantity of the product, the date and time of the sale, and the dispenser's signature.

(4) no person shall purchase or be dispensed more than 120 milliliters or more than 120 grams of any Schedule V substance which contains codeine, dihydrocodeine, or any salts thereof, or ethylmorphine, or any salts thereof, in any 96 hour period. The purchaser shall sign a form, approved by the Department of Professional Regulation, attesting that he has not purchased any Schedule V controlled substances within the immediately preceding 96

hours.

(5) a copy of the records of sale, including all information required by paragraph (3), shall be forwarded to the Department of Professional Regulation at its principal office by the 15th day of the following month.

(6) all records of purchases and sales shall be maintained for not less than 2 years.

(7) no person shall obtain or attempt to obtain within any consecutive 96 hour period any Schedule V substances of more than 120 milliliters or more than 120 grams containing codeine, dihydrocodeine or any of its salts, or ethylmorphine or any of its salts. Any person obtaining any such preparations or combination of preparations in excess of this limitation shall be in unlawful possession of such controlled substance.

(8) a person qualified to dispense controlled substances under this Act and registered thereunder shall at no time maintain or keep in stock a quantity of Schedule V controlled substances defined and listed in Section 212 (b) (1), (2) or (3) in excess of 4.5 liters for each substance; a pharmacy shall at no time maintain or keep in stock a quantity of Schedule V controlled substances as defined in excess of 4.5 liters for each substance, plus the additional quantity of controlled substances necessary to fill the largest number of prescription orders filled by that pharmacy for such controlled substances in any one week in the previous year. These limitations shall not apply to Schedule V controlled substances which Federal law prohibits from being dispensed without a prescription.

(9) no person shall distribute or dispense butyl nitrite for inhalation or other introduction into the human body for euphoric or physical effect.

(d) Every practitioner shall keep a record of controlled substances received by him and a record of all such controlled

substances administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be sufficient compliance with this paragraph if any practitioner utilizing controlled substances listed in Schedules III, IV and V shall keep a record of all those substances dispensed and distributed by him other than those controlled substances which are administered by the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject. A practitioner who dispenses, other than by administering, a controlled substance in Schedule II, which is a narcotic drug listed in Section 206 of this Act, or which contains any quantity of amphetamine or methamphetamine, their salts, optical isomers or salts of optical isomers, pentazocine, or methaqualone shall do so only upon the issuance of a written prescription blank by a prescriber.

(e) Whenever a manufacturer distributes a controlled substance in a package prepared by him, and whenever a wholesale distributor distributes a controlled substance in a package prepared by him or the manufacturer, he shall securely affix to each package in which that substance is contained a label showing in legible English the name and address of the manufacturer, the distributor and the quantity, kind and form of controlled substance contained therein. No person except a pharmacist and only for the purposes of filling a prescription under this Act, shall alter, deface or remove any label so affixed.

(f) Whenever a practitioner dispenses any controlled substance except a non-prescription targeted methamphetamine precursor <u>regulated by</u> ~~as defined in~~ the Methamphetamine Precursor Control Act, he shall affix to the container in which such substance is sold or dispensed, a label indicating the date of initial filling, the practitioner's name and address, the name of the patient, the name of the prescriber, the

directions for use and cautionary statements, if any, contained in any prescription or required by law, the proprietary name or names or the established name of the controlled substance, and the dosage and quantity, except as otherwise authorized by regulation by the Department of Professional Regulation. No person shall alter, deface or remove any label so affixed.

(g) A person to whom or for whose use any controlled substance has been prescribed or dispensed by a practitioner, or other persons authorized under this Act, and the owner of any animal for which such substance has been prescribed or dispensed by a veterinarian, may lawfully possess such substance only in the container in which it was delivered to him by the person dispensing such substance.

(h) The responsibility for the proper prescribing or dispensing of controlled substances is upon the prescriber and the responsibility for the proper filling of a prescription for controlled substance drugs rests with the pharmacist. An order purporting to be a prescription issued to any individual, which is not in the regular course of professional treatment nor part of an authorized methadone maintenance program, nor in legitimate and authorized research instituted by any accredited hospital, educational institution, charitable foundation, or federal, state or local governmental agency, and which is intended to provide that individual with controlled substances sufficient to maintain that individual's or any other individual's physical or psychological addiction, habitual or customary use, dependence, or diversion of that controlled substance is not a prescription within the meaning and intent of this Act; and the person issuing it, shall be subject to the penalties provided for violations of the law relating to controlled substances.

(i) A prescriber shall not preprint or cause to be preprinted a prescription for any controlled substance; nor shall any practitioner issue, fill or cause to be issued or

filled, a preprinted prescription for any controlled substance.

(j) No person shall manufacture, dispense, deliver, possess with intent to deliver, prescribe, or administer or cause to be administered under his direction any anabolic steroid, for any use in humans other than the treatment of disease in accordance with the order of a physician licensed to practice medicine in all its branches for a valid medical purpose in the course of professional practice. The use of anabolic steroids for the purpose of hormonal manipulation that is intended to increase muscle mass, strength or weight without a medical necessity to do so, or for the intended purpose of improving physical appearance or performance in any form of exercise, sport, or game, is not a valid medical purpose or in the course of professional practice.

(Source: P.A. 94-694, eff. 1-15-06.)"; and

on page 14, by inserting after line 1 the following:

"Section 10. The Methamphetamine Precursor Control Act is amended by changing Sections 5, 10, 15, 20, 25, and 35 and by adding Section 60 as follows:

(720 ILCS 648/5)

Sec. 5. Purpose. The purpose of this Act is to reduce the harm that methamphetamine manufacturing and manufacturers are inflicting on individuals, families, communities, first responders, the economy, and the environment in Illinois, by making it more difficult for persons engaged in the unlawful manufacture of methamphetamine and related activities to obtain methamphetamine's essential ingredient, ephedrine or pseudoephedrine. <u>It is the intent of the General Assembly that this Act operate in tandem with and be interpreted as consistent with federal laws and regulations relating to the</u>

subject matter of this Act to the greatest extent possible.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/10)

Sec. 10. Definitions. In this Act:

"Administer" or "administration" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Agent" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Convenience package" means any package that contains 360 milligrams or less of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers in liquid or liquid-filled capsule form.

"Deliver" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Dispense" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Distribute" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"List I chemical" has the meaning provided in 21 U.S.C. Section 802.

"Methamphetamine precursor" has the meaning provided in Section 10 of the Methamphetamine Control and Community Protection Act.

"Package" means an item packaged and marked for retail sale that is not designed to be further broken down or subdivided for the purpose of retail sale.

"Pharmacist" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Pharmacy" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Practitioner" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Prescriber" has the meaning provided in Section 102 of the

Illinois Controlled Substances Act.

"Prescription" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

"Readily retrievable" has the meaning provided in 21 C.F.R. part 1300.

"Retail distributor" means a grocery store, general merchandise store, drug store, other merchandise store, or other entity or person whose activities as a distributor relating to drug products containing targeted methamphetamine precursor are limited exclusively or almost exclusively to sales for personal use by an ultimate user, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

"Sales employee" means any employee or agent, other than a pharmacist or pharmacy technician who works exclusively or almost exclusively behind a pharmacy counter, who at any time (a) operates a cash register at which targeted packages may be sold, (b) ~~works at or behind a pharmacy counter, (c)~~ stocks shelves containing targeted packages, or (c) ~~(d)~~ trains or supervises any other employee or agent who engages in any of the preceding activities.

"Single retail transaction" means a sale by a retail distributor to a specific customer at a specific time.

"Targeted methamphetamine precursor" means any compound, mixture, or preparation that contains any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

"Targeted package" means a package, including a convenience package, containing any amount of targeted methamphetamine precursor.

"Ultimate user" has the meaning provided in Section 102 of the Illinois Controlled Substances Act.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/15)

Sec. 15. Basic provisions.

(a) No targeted methamphetamine precursor shall be purchased, received, or otherwise acquired in any manner other than that described in Section 20 of this Act.

(b) No targeted methamphetamine precursor shall be knowingly administered, dispensed, or distributed for any purpose other than a medical purpose.

(c) No targeted methamphetamine precursor shall be knowingly administered, dispensed, or distributed for the purpose of violating or evading this Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act.

(d) No targeted methamphetamine precursor shall be administered, dispensed, or distributed with knowledge that it will be used to manufacture methamphetamine or with reckless disregard of its likely use to manufacture methamphetamine.

(e) No targeted methamphetamine precursor shall be administered, dispensed, or distributed except by:

(1) a pharmacist pursuant to the valid order of a prescriber;

(2) any other practitioner authorized to do so by the Illinois Controlled Substances Act;

(3) a drug abuse treatment program, pursuant to subsection (d) of Section 313 of the Illinois Controlled Substances Act;

(4) a pharmacy pursuant to Section 25 of this Act;

(5) a retail distributor pursuant to Sections 30 and 35 of this Act; or

(6) a distributor authorized by the Drug Enforcement Administration to distribute bulk quantities of a list I chemical under the federal Controlled Substances Act and corresponding regulations, or the employee or agent of such a distributor acting in the normal course of business.

(f) Notwithstanding any provision of this Act to the contrary, it is lawful for persons to provide small quantities of targeted methamphetamine precursors to immediate family or household members for legitimate medical purposes, and it is lawful for persons to receive small quantities of targeted methamphetamine precursors from immediate family or household members for legitimate medical purposes.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/20)

Sec. 20. Restrictions on purchase, receipt, or acquisition.

(a) Except as provided in subsection (e) of this Section, any person 18 years of age or older wishing to purchase, receive, or otherwise acquire a targeted methamphetamine precursor shall, prior to taking possession of the targeted methamphetamine precursor:

(1) provide a driver's license or other government-issued identification showing the person's name, date of birth, and photograph; and

(2) sign a log documenting the name and address of the person, date and time of the transaction, and brand and product name and total quantity distributed of ephedrine or pseudoephedrine, their salts, or optical isomers, or salts of optical isomers.

(b) Except as provided in subsection (e) of this Section, no person shall knowingly purchase, receive, or otherwise acquire, within any 30-day period products containing more than a total of 7,500 milligrams of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(c) Except as provided in subsections (d) and (e) of this Section, no person shall knowingly purchase, receive, or otherwise acquire more than 2 targeted packages in a single retail transaction.

(d) Except as provided in subsection (e) of this Section, no person shall knowingly purchase, receive, or otherwise acquire more than one convenience package from a retail location other than a pharmacy counter in a 24-hour period.

(e) This Section shall not apply to any person who purchases, receives, or otherwise acquires a targeted methamphetamine precursor for the purpose of dispensing, distributing, or administering it in a lawful manner described in subsection (e) of Section 15 of this Act.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/25)

Sec. 25. Pharmacies.

(a) No targeted methamphetamine precursor may be knowingly distributed through a pharmacy, including a pharmacy located within, owned by, operated by, or associated with a retail distributor unless all terms of this Section are satisfied.

(b) Any targeted methamphetamine precursor other than a convenience package or a liquid, including but not limited to any targeted methamphetamine precursor in liquid-filled capsules, ~~The targeted methamphetamine precursor~~ shall: ~~(1)~~ be packaged in blister packs, with each blister containing not more than 2 dosage units, or when the use of blister packs is technically infeasible, in unit dose packets. Each targeted package shall~~; and (2)~~ contain no more than 3,000 milligrams of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(c) The targeted methamphetamine precursor shall be stored behind the pharmacy counter and distributed by a pharmacist or pharmacy technician licensed under the Pharmacy Practice Act of 1987.

(d) Any retail distributor operating a pharmacy, and any pharmacist or pharmacy technician involved in the transaction or transactions, shall ensure that any person purchasing,

receiving, or otherwise acquiring the targeted methamphetamine precursor complies with subsection (a) of Section 20 of this Act.

(e) Any retail distributor operating a pharmacy, and any pharmacist or pharmacy technician involved in the transaction or transactions, shall verify that:

(1) The person purchasing, receiving, or otherwise acquiring the targeted methamphetamine precursor is 18 years of age or older and resembles the photograph of the person on the government-issued identification presented by the person; and

(2) The name entered into the log referred to in subsection (a) of Section 20 of this Act corresponds to the name on the government-issued identification presented by the person.

(f) The logs referred to in subsection (a) of Section 20 of this Act shall be kept confidential, maintained for not less than 2 years, and made available for inspection and copying by any law enforcement officer upon request of that officer. These logs may be kept in an electronic format if they include all the information specified in subsection (a) of Section 20 of this Act in a manner that is readily retrievable and reproducible in hard-copy format.

(g) No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute any targeted methamphetamine precursor to any person under 18 years of age.

~~(h) No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute to a single person in any 24-hour period more than one convenience package.~~

~~(i) Except as provided in subsection (h) of this Section, no~~

(h) No retail distributor operating a pharmacy, and no

pharmacist or pharmacy technician, shall knowingly distribute to a single person more than 2 targeted packages in a single retail transaction.

(i) ~~(j)~~ No retail distributor operating a pharmacy, and no pharmacist or pharmacy technician, shall knowingly distribute to a single person in any 30-day period products containing more than a total of 7,500 milligrams of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers.

(j) A pharmacist or pharmacy technician may distribute a targeted methamphetamine precursor to a person who is without a form of identification specified in paragraph (1) of subsection (a) of Section 20 of this Act only if all other provisions of this Act are followed and either:

(1) the person presents a driver's license issued without a photograph by the State of Illinois pursuant to the Illinois Administrative Code, Title 92, Section 1030.90(b)(1) or 1030.90(b)(2); or

(2) the person is known to the pharmacist or pharmacy technician, the person presents some form of identification, and the pharmacist or pharmacy technician reasonably believes that the targeted methamphetamine precursor will be used for a legitimate medical purpose and not to manufacture methamphetamine.

(k) When a pharmacist or pharmacy technician distributes a targeted methamphetamine precursor to a person according to the procedures set forth in this Act, and the pharmacist or pharmacy technician does not have access to a working cash register at the pharmacy counter, the pharmacist or pharmacy technician may instruct the person to pay for the targeted methamphetamine precursor at a cash register located elsewhere in the retail establishment, whether that register is operated by a pharmacist, pharmacy technician, or other employee or agent of the retail establishment.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/35)

Sec. 35. Retail distributors; training requirements.

(a) Every retail distributor of any targeted methamphetamine precursor shall train each sales employee on the topics listed on the certification form described in subsection (b) of this Section. This training may be conducted by a live trainer or by means of a computer-based training program. This training shall be completed within 30 days of the effective date of this Act or within 30 days of the date that each sales employee begins working for the retail distributor, whichever of these 2 dates comes later.

(b) Immediately after training each sales employee as required in subsection (a) of this Section, every retail distributor of any targeted methamphetamine precursor shall have each sales employee read, sign, and date a certification containing the following language:

(1) My name is (insert name of employee) and I am an employee of (insert name of business) at (insert street address).

(2) I understand that in Illinois there are laws governing the sale of certain over-the-counter medications that contain a chemical called ephedrine or a second chemical called pseudoephedrine. Medications that are subject to these laws are called "targeted methamphetamine precursors".

(3) I understand that "targeted methamphetamine precursors" can be used to manufacture the illegal and dangerous drug methamphetamine and that methamphetamine is causing great harm to individuals, families, communities, the economy, and the environment throughout Illinois.

(4) I understand that under Illinois law, unless they are at a pharmacy counter, customers can only purchase

small "convenience packages" of "targeted methamphetamine precursors".

(5) I understand that under Illinois law, customers can only purchase these "convenience packages" if they are 18 years of age or older, show identification, and sign a log according to procedures that have been described to me.

(6) I understand that under Illinois law, I cannot sell more than one "convenience package" to a single customer in one 24-hour period.

(7) I understand that under Illinois law, I cannot sell "targeted methamphetamine precursors" to a person if I know that the person is going to use them to make methamphetamine.

(8) I understand that there are a number of ingredients that are used to make the illegal drug methamphetamine, including "targeted methamphetamine precursors" sold in "convenience packages". My employer has shown me a list of these various ingredients, and I have reviewed the list.

(9) I understand that there are certain procedures that I should follow if I suspect that a store customer is purchasing "targeted methamphetamine precursors" or other products for the purpose of manufacturing methamphetamine. These procedures have been described to me, and I understand them.

(c) A certification form of the type described in subsection (b) of this Section may be signed with a handwritten signature or an electronic signature that includes a unique identifier for each employee. The certification shall be retained by the retail distributor for each sales employee for the duration of his or her employment and for at least 30 days following the end of his or her employment. Any such form shall be made available for inspection and copying by any law enforcement officer upon request of that officer. These records may be kept in electronic format if they include all the

information specified in this Section in a manner that is readily retrievable and reproducible in hard-copy format.

(d) The Office of the Illinois Attorney General shall make available to retail distributors the list of methamphetamine ingredients referred to in subsection (b) of this Section.

(e) The training requirements set forth in this Section apply to the distribution of convenience packages away from pharmacy counters as set forth in Section 30 of this Act but do not apply to the distribution of targeted methamphetamine precursors through a pharmacy as set forth in Section 25 of this Act.

(Source: P.A. 94-694, eff. 1-15-06.)

(720 ILCS 648/60 new)

Sec. 60. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.".