

AN ACT

1
2 relating to the transmission of records regarding over-the-counter
3 sales of ephedrine, pseudoephedrine, and norpseudoephedrine and a
4 person's civil liability for certain acts arising from the sale of
5 those products.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 486.001(a), Health and Safety Code, is
8 amended by adding Subdivision (6) to read as follows:

9 (6) "Real-time electronic logging system" means a
10 system intended to be used by law enforcement agencies and
11 pharmacies or other business establishments that:

12 (A) is installed, operated, and maintained free
13 of any one-time or recurring charge to the business establishment
14 or to the state;

15 (B) is able to communicate in real time with
16 similar systems operated in other states and similar systems
17 containing information submitted by more than one state;

18 (C) complies with the security policy of the
19 Criminal Justice Information Services division of the Federal
20 Bureau of Investigation;

21 (D) complies with information exchange standards
22 adopted by the National Information Exchange Model;

23 (E) uses a mechanism to prevent the completion of
24 a sale of a product containing ephedrine, pseudoephedrine, or

1 norpseudoephedrine that would violate state or federal law
2 regarding the purchase of a product containing those substances;
3 and

4 (F) is equipped with an override of the mechanism
5 described in Paragraph (E) that:

6 (i) may be activated by an employee of a
7 business establishment; and

8 (ii) creates a record of each activation of
9 the override.

10 SECTION 2. Section 486.014, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 486.014. PREREQUISITES TO AND RESTRICTIONS ON SALE.

13 (a) Before completing an over-the-counter sale of a product
14 containing ephedrine, pseudoephedrine, or norpseudoephedrine, a
15 business establishment that engages in those sales shall:

16 (1) require the person making the purchase to:

17 (A) display a driver's license or other form of
18 government-issued identification containing the person's
19 photograph and indicating that the person is 16 years of age or
20 older; and

21 (B) sign for the purchase;

22 (2) make a record of the sale, including the name and
23 date of birth of the person making the purchase, the address of the
24 purchaser, the date and time of the purchase, the type of
25 identification displayed by the person and the identification
26 number, and the item and number of grams purchased; and

27 (3) transmit the record of sale as required by Section

1 486.0141.

2 (b) A business establishment may not sell to ~~[take actions~~
3 ~~necessary to prevent]~~ a person who makes over-the-counter purchases
4 of one or more products containing ephedrine, pseudoephedrine, or
5 norpseudoephedrine:

6 (1) within any calendar day, ~~[from obtaining from the~~
7 ~~establishment in a single transaction]~~ more than 3.6 [+

8 ~~[(A) two packages of these products, or~~

9 ~~[(B) six]~~ grams of ephedrine, pseudoephedrine,
10 norpseudoephedrine, or a combination of those substances; and

11 (2) within any 30-day period, more than nine grams of
12 ephedrine, pseudoephedrine, norpseudoephedrine, or a combination
13 of those substances.

14 SECTION 3. Subchapter B, Chapter 486, Health and Safety
15 Code, is amended by adding Sections 486.0141, 486.0142, 486.0143,
16 486.0144, 486.0145, and 486.0146 to read as follows:

17 Sec. 486.0141. TRANSMISSION OF SALES INFORMATION TO
18 REAL-TIME ELECTRONIC LOGGING SYSTEM. (a) Before completing an
19 over-the-counter sale of a product containing ephedrine,
20 pseudoephedrine, or norpseudoephedrine, a business establishment
21 that engages in those sales shall transmit the information in the
22 record made under Section 486.014(a)(2) to a real-time electronic
23 logging system.

24 (b) Except as provided by Subsection (c), a business
25 establishment may not complete an over-the-counter sale of a
26 product containing ephedrine, pseudoephedrine, or
27 norpseudoephedrine if the real-time electronic logging system

1 returns a report that the completion of the sale would result in the
2 person obtaining an amount of ephedrine, pseudoephedrine,
3 norpseudoephedrine, or a combination of those substances greater
4 than the amount described by Section 486.014(b), regardless of
5 whether all or some of the products previously obtained by the buyer
6 were sold at the establishment or another business establishment.

7 (c) An employee of a business establishment may complete a
8 sale prohibited by Subsection (b) by using the override mechanism
9 described by Section 486.001(a)(6)(F) only if the employee has a
10 reasonable fear of imminent bodily injury or death from the person
11 attempting to obtain ephedrine, pseudoephedrine, or
12 norpseudoephedrine.

13 (d) On request of the Department of Public Safety, the
14 administrators of a real-time electronic logging system shall make
15 available to the department a copy of each record of an
16 over-the-counter sale of a product containing ephedrine,
17 pseudoephedrine, or norpseudoephedrine that is submitted by a
18 business establishment located in this state.

19 Sec. 486.0142. TEMPORARY EXEMPTION. (a) On application by
20 a business establishment that operates a pharmacy and engages in
21 over-the-counter sales of products containing ephedrine,
22 pseudoephedrine, or norpseudoephedrine as authorized by Section
23 486.011, the State Board of Pharmacy may grant that business
24 establishment a temporary exemption, not to exceed 180 days, from
25 the requirement of using a real-time electronic logging system
26 under this chapter.

27 (b) On application by a business establishment that engages

1 in over-the-counter sales of products containing ephedrine,
2 pseudoephedrine, or norpseudoephedrine in accordance with a
3 certificate of authority issued under Section 486.012, the
4 department may grant that business establishment a temporary
5 exemption, not to exceed 180 days, from the requirement of using a
6 real-time electronic logging system under this chapter.

7 (c) A business establishment granted a temporary exemption
8 under this section must keep records of sales in the same manner
9 required under Section 486.0143 for a business establishment that
10 experiences a mechanical or electronic failure of the real-time
11 electronic logging system.

12 (d) An exemption granted under this section does not relieve
13 a business establishment of any duty under this chapter other than
14 the duty to use a real-time electronic logging system.

15 Sec. 486.0143. WRITTEN LOG OR OTHER ELECTRONIC
16 RECORDKEEPING. If a business establishment that engages in
17 over-the-counter sales of a product containing ephedrine,
18 pseudoephedrine, or norpseudoephedrine experiences a mechanical or
19 electronic failure of the real-time electronic logging system, the
20 business shall:

21 (1) maintain a written record or an electronic record
22 made by any means that satisfies the requirements of Section
23 486.014(a)(2); and

24 (2) enter the information in the real-time electronic
25 logging system as soon as practicable after the system becomes
26 operational.

27 Sec. 486.0144. ONLINE PORTAL. The administrators of a

1 real-time electronic logging system shall provide real-time access
2 to the information in the system to the Department of Public Safety
3 if the department executes a memorandum of understanding with the
4 administrators.

5 Sec. 486.0145. LIMITATION ON CIVIL LIABILITY. A person is
6 not liable for an act done or omission made in compliance with the
7 requirements of Section 486.014 or 486.0141.

8 Sec. 486.0146. PRIVACY PROTECTIONS. (a) The privacy
9 protections provided an individual under 21 C.F.R. Section 1314.45
10 apply to information entered or stored in a real-time electronic
11 logging system.

12 (b) A business establishment that engages in
13 over-the-counter sales of a product containing ephedrine,
14 pseudoephedrine, or norpseudoephedrine may disclose information
15 entered or stored in a real-time electronic logging system only to
16 the United States Drug Enforcement Administration and other
17 federal, state, and local law enforcement agencies.

18 (c) A business establishment that engages in
19 over-the-counter sales of a product containing ephedrine,
20 pseudoephedrine, or norpseudoephedrine may not use information
21 entered or stored in a real-time electronic logging system for any
22 purpose other than for a disclosure authorized by Subsection (b) or
23 to comply with the requirements of this chapter.

24 (d) Notwithstanding Subsection (c), a business
25 establishment that engages in over-the-counter sales of a product
26 containing ephedrine, pseudoephedrine, or norpseudoephedrine or an
27 employee or agent of the business establishment is not civilly

1 liable for the release of information entered or stored in a
2 real-time electronic logging system unless the release constitutes
3 negligence, recklessness, or wilful misconduct.

4 SECTION 4. Section 486.015, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 486.015. MAINTENANCE OF RECORDS. (a) Except as
7 provided by Subsection (b), a [The] business establishment shall
8 maintain each record made under Section 486.014(a)(2) [486.014(2)]
9 until at least the second anniversary of the date the record is made
10 and shall make each record available on request by the department or
11 any local, state, or federal law enforcement agency, including the
12 United States Drug Enforcement Administration [the Department of
13 Public Safety].

14 (b) Subsection (a) does not apply to a business
15 establishment that has used a real-time electronic logging system
16 for longer than two years.

17 (c) A business establishment that has used a real-time
18 electronic logging system for longer than two years shall destroy
19 all paper records maintained under this section unless the
20 destruction is otherwise prohibited by law.

21 SECTION 5. Not later than September 30, 2011, the Texas
22 State Board of Pharmacy and the Department of State Health Services
23 shall provide to the administrators of any real-time electronic
24 logging system described by Subchapter B, Chapter 486, Health and
25 Safety Code, as amended by this Act, the names, addresses, and phone
26 numbers of all business establishments engaging in
27 over-the-counter sales of products containing ephedrine,

1 pseudoephedrine, and norpseudoephedrine.

2 SECTION 6. (a) The changes in law made by this Act apply
3 only to an over-the-counter sale of a product containing ephedrine,
4 pseudoephedrine, or norpseudoephedrine that is completed on or
5 after January 1, 2012. An over-the-counter sale of a product
6 containing ephedrine, pseudoephedrine, or norpseudoephedrine that
7 was completed before January 1, 2012, is covered by the law in
8 effect when the sale was completed, and the former law is continued
9 in effect for that purpose.

10 (b) A business establishment is not required to use a
11 real-time electronic logging system required by Subchapter B,
12 Chapter 486, Health and Safety Code, as amended by this Act, before
13 January 1, 2012.

14 SECTION 7. This Act takes effect September 1, 2011.

David Dewhurst
President of the Senate

Joe Straus
Speaker of the House

I certify that H.B. No. 1137 was passed by the House on April 20, 2011, by the following vote: Yeas 130, Nays 13, 2 present, not voting.

Robert Harney
Chief Clerk of the House

I certify that H.B. No. 1137 was passed by the Senate on May 21, 2011, by the following vote: Yeas 31, Nays 0.

Lacey Law
Secretary of the Senate

APPROVED: 17 JUN '11
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 PM O'CLOCK
JUN 17 2011
Hope Radtke
Secretary of State