

Enrolled
House Bill 2648

Sponsored by Representative POST, Senator DEMBROW, Representative SALINAS, Senator THATCHER; Representatives BONHAM, BOSHART DAVIS, BREESE-IVERSON, CAMPOS, DEXTER, EVANS, GRAYBER, HAYDEN, LEIF, LEVY, LIVELY, MEEK, MOORE-GREEN, MORGAN, NOBLE, NOSSE, OWENS, PRUSAK, SANCHEZ, SCHOUTEN, SMITH DB, SMITH G, SOLLMAN, WRIGHT, ZIKA, Senators BOQUIST, FINDLEY, FREDERICK, GIROD, KENNEMER, KNOPP, ROBINSON, STEINER HAYWARD, THOMSEN (Presession filed.)

CHAPTER

AN ACT

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

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

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

SECTION 2. (1) As used in this section, “pharmacist,” “pharmacy” and “pharmacy technician” have the meanings given those terms in ORS 689.005.

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

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

- (a) The date and time of the transfer;
- (b) The name, address and date of birth of the person to whom the transfer will be made;
- (c) The form of government-issued photo identification and identification number of the person to whom the transfer will be made;
- (d) The name of the government agency that issued the photo identification; and
- (e) The name of the drug that will be transferred and the amount of pseudoephedrine or ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine, specified in grams, to be transferred.

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

(5)(a) Upon transferring a drug described in subsection (2) of this section, the pharmacist or pharmacy technician shall require the person to whom the drug is transferred to sign an electronic or written log that shows the date of the transfer, the name of the person to

whom the transfer is made and the amount transferred of pseudoephedrine or ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine, specified in grams.

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

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

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

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

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

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

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

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

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

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

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

(iv) The name of the drug transferred;

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

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

(F) Be free of charge to a pharmacy;

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

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

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

(b) A pharmacist who uses the override function described in this subsection shall record in the electronic system the use of the override.

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

(a) Transferred from behind a pharmacy counter; and

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

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

(9) This section does not apply to a drug that contains pseudoephedrine or ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine when the drug is transferred pursuant to a prescription.

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

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

SECTION 3. ORS 475.950 is amended to read:

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

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

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

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

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

(b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor substance to patients upon prescription.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The State Board of Pharmacy may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions

and powers conferred on the board by section 2 of this 2021 Act and the amendments to ORS 475.950 by section 3 of this 2021 Act.

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

Passed by House April 28, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 7, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State