SENATE, No. 2501

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MAY 12, 2005

Sponsored by:
Senator PAUL SARLO
District 36 (Bergen, Essex and Passaic)
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District 13 (Middlesex and Monmouth)

SYNOPSIS
Restricts sales of ephedrine and pseudoephedrine and creates permissive inference for possession of certain amounts.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning certain substances, amending P.L.2003, c.280 and supplementing Title 51 of the Revised Statutes and Title 2C of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) Except as provided in subsection e. of this section, no person shall sell, offer for sale or purchase in any single transaction more than:
   a. Three packages, or any number of packages that contain a total of nine grams, of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or
   b. Three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or any number of packages of such combination drug that contain a total of nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.
   c. As used in this section, "drug" has the meaning as defined in R.S.24:1-1.
   d. A violation of this section is a disorderly persons offense.
   e. This act shall not apply to a prescription legend drug lawfully prescribed or administered by a licensed physician, veterinarian or dentist.

2. (New section) Every pharmacy, store and other retail mercantile establishment shall promptly report to local law enforcement authorities the occurrence of any significant theft or loss of any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers. As used in this section, "store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale.

3. Section 35 of P.L.2003, c.280 (C.45:14-74) is amended to read as follows:
   35. a. All licensed pharmacy practice sites shall report to the board the occurrences of any of the following:
      (1) Closing of the pharmacy practice site;
      (2) Change of ownership, location, interior site design, permit
classification or pharmacist-in-charge of the pharmacy practice site;

(3) Any significant theft or loss of legend drugs or devices or of any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers;

(4) Disasters, accidents, any theft, destruction or loss of records required to be maintained by State or federal law;

(5) Any pharmacy malpractice liability insurance claim settlement, judgment or arbitration award in excess of $10,000 to which an owner, an employee of, or the pharmacy practice site itself is a party; and

(6) Any and all other matters and occurrences as the board may require by rule or regulation.

b. The manner, time and content of the notification shall be prescribed by rule or regulation by the board.

(cf: P.L.2003,c.280,s.35)

4. (New section) Proof that a person has in his possession more than 30 grams or 10 packages of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers; or more than 30 grams or 10 packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, shall give rise to a permissive inference by the trier of fact that the person acted with a purpose to create methamphetamine.

5. The Department of Health and Senior Services in conjunction with the Division of Consumer Affairs in the Department of Law and Public Safety shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations necessary to implement this act.

6. This act shall take effect on the 90th day following enactment except for section 5 which shall take effect immediately.

STATEMENT

Methamphetamine, in the form of "crystal meth," can be produced relatively easily in a drug user's home using ephedrine and pseudoephedrine as ingredients. Because ephedrine and pseudoephedrine have many legitimate medical uses and are commonly sold over-the-counter as decongestants and cold remedies, this bill is intended to impose reasonable restrictions on the sales of these substances without imposing arduous constraints on such sales.

Under the bill, no person could offer for sale or purchase in any single transaction more than three packages, or any number of...
packages that contain a total of nine grams, of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or any number of packages of such combination drug that contain a total of nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.

A person who buys or sells these substances in violation of the bill would be guilty of a disorderly persons offense. A disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to $1,000 or both.

The bill would not apply to a prescription lawfully prescribed or administered by a licensed physician, veterinarian or dentist.

The bill also provides that every pharmacy, store and other retail mercantile establishment would be required to promptly report to local law enforcement authorities the occurrence of any significant theft or loss of any drug containing any of theses substances. The bill also amends N.J.S.A.45:14-74, which currently requires pharmacies to report to the New Jersey State Board of Pharmacy any significant theft or loss of legend drugs or devices, to provide that pharmacies must also report any significant theft or loss of any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.

In addition, the bill establishes a permissive inference, to be used in prosecutions, that a person acted with a purpose to create methamphetamine if there is proof that he has in his possession more than 30 grams or 10 packages of any drug containing the listed substances.