

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 20

Final Reading

Introduced by McCoy, 39.

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to controlled substances; to amend sections
 2 28-401.01 and 60-4,111.01, Reissue Revised Statutes of
 3 Nebraska, and sections 28-101 and 28-456.01, Revised
 4 Statutes Cumulative Supplement, 2010; to regulate the
 5 sale of methamphetamine precursors as prescribed; to
 6 define terms; to provide and change penalties; to provide
 7 for storage and use of information encoded on a motor
 8 vehicle operator's license or state identification card;
 9 to harmonize provisions; to provide an operative date;
 10 and to repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and sections 3 to 7 of
4 this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. Section 28-401.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-401.01 Sections 28-401 to 28-456.01 and sections 3 to
9 7 of this act shall be known and may be cited as the Uniform
10 Controlled Substances Act.

11 Sec. 3. For purposes of sections 3 to 7 of this act:

12 (1) Exchange means the National Precursor Log Exchange
13 administered by the National Association of Drug Diversion
14 Investigators;

15 (2) Methamphetamine precursor means any drug product
16 containing ephedrine, pseudoephedrine, or phenylpropanolamine that is
17 required to be documented pursuant to the logbook requirements of 21
18 U.S.C. 830;

19 (3) Seller means any person who lawfully sells a
20 methamphetamine precursor pursuant to subdivision (1)(d) of section
21 28-456 or his or her employer; and

22 (4) Stop-sale alert means a notification sent to a seller
23 indicating that the completion of a methamphetamine precursor sale
24 would result in a violation of subdivision (1)(d)(i) or (ii) of
25 section 28-456.

1 Sec. 4. (1) Beginning January 1, 2012, each seller shall,
2 before completing a sale of a methamphetamine precursor,
3 electronically submit required information to the exchange, if the
4 exchange is available to sellers. Required information shall include,
5 but not be limited to:

6 (a) The name, age, and address of the person purchasing,
7 receiving, or otherwise acquiring the methamphetamine precursor;

8 (b) The name of the product and quantity of product
9 purchased;

10 (c) The date and time of the purchase;

11 (d) The name or initials of the seller who sold the
12 product; and

13 (e) The type of identification presented by the customer,
14 the governmental entity that issued the identification, and the
15 number on the identification.

16 (2) If a seller experiences mechanical or electronic
17 failure of the electronic logging equipment on the sales end of the
18 transaction or a failure of the exchange and is unable to comply with
19 subsection (1) of this section, the seller shall maintain a written
20 log or an alternative electronic recordkeeping mechanism or may
21 refrain from selling any methamphetamine precursor until such time as
22 the seller is able to comply with subsection (1) of this section.

23 (3) The Attorney General may grant a waiver exempting a
24 seller from compliance with subsection (1) of this section upon a
25 showing of good cause by the seller that he or she is otherwise

1 unable to submit log information by electronic means, including, but
2 not limited to, any financial, technological, or other reason which
3 would place an undue burden on the seller, as established by the
4 Attorney General.

5 (4) Whenever the exchange generates a stop-sale alert,
6 the seller shall not complete the sale unless the seller has a
7 reasonable fear of imminent bodily harm if he or she does not
8 complete the sale. The exchange shall contain an override function to
9 the stop-sale alert for the seller to use in a situation in which a
10 reasonable fear of imminent bodily harm is present.

11 (5) This section does not apply if a lawful prescription
12 for the methamphetamine precursor is presented to a pharmacist
13 licensed under the Uniform Credentialing Act.

14 Sec. 5. As a condition of use in Nebraska, the National
15 Association of Drug Diversion Investigators shall provide real-time
16 access to the exchange through its online portal to law enforcement
17 in this state as authorized by the Attorney General and no fee or
18 charge shall be imposed on a seller for the use of the exchange.

19 Sec. 6. A seller utilizing in good faith sections 3 to 7
20 of this act shall be immune from any civil cause of action based upon
21 an act or omission in carrying out such sections.

22 Sec. 7. Beginning January 1, 2013, a seller that
23 knowingly fails to submit methamphetamine precursor information to
24 the exchange as required by sections 3 to 7 of this act or knowingly
25 submits incorrect information to the exchange shall be guilty of a

1 Class IV misdemeanor.

2 Sec. 8. Section 28-456.01, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 28-456.01 (1) No person shall purchase, receive, or
5 otherwise acquire, other than wholesale acquisition by a retail
6 business in the normal course of its trade or business, any drug
7 product containing more than three and six-tenths grams of
8 pseudoephedrine base or three and six-tenths grams of
9 phenylpropanolamine base during a twenty-four-hour period unless
10 purchased pursuant to a medical order. Any person who violates this
11 section shall be guilty of an ~~infraction as defined in section~~
12 ~~29-431.~~ a Class IV misdemeanor for the first offense and a Class III
13 misdemeanor for each subsequent offense.

14 (2) No person shall purchase, receive, or otherwise
15 acquire, other than wholesale acquisition by a retail business in the
16 normal course of its trade or business, any drug product containing
17 more than nine grams of pseudoephedrine base or nine grams of
18 phenylpropanolamine base during a thirty-day period unless purchased
19 pursuant to a medical order. Any person who violates this section
20 shall be guilty of a Class IV misdemeanor for the first offense and a
21 Class III misdemeanor for each subsequent offense.

22 Sec. 9. Section 60-4,111.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 60-4,111.01 (1) The Department of Motor Vehicles, the
25 courts, or law enforcement agencies may store or compile information

1 acquired from an operator's license or a state identification card
2 for their statutorily authorized purposes.

3 (2) Except as otherwise provided in subsection (3) or (4)
4 of this section, no person having use of or access to machine-
5 readable information encoded on an operator's license or a state
6 identification card shall compile, store, preserve, trade, sell, or
7 share such information. Any person who trades, sells, or shares such
8 information shall be guilty of a Class IV felony. Any person who
9 compiles, stores, or preserves such information except as authorized
10 in subsection (3) or (4) of this section shall be guilty of a Class
11 IV felony.

12 (3)(a) For purposes of compliance with and enforcement of
13 restrictions on the purchase of alcohol, lottery tickets, and tobacco
14 products, a retailer who sells any of such items pursuant to a
15 license issued or a contract under the applicable statutory provision
16 may scan machine-readable information encoded on an operator's
17 license or a state identification card presented for the purpose of
18 such a sale. The retailer may store only the following information
19 obtained from the license or card: Age and license or card
20 identification number. The retailer shall post a sign at the point of
21 sale of any of such items stating that the license or card will be
22 scanned and that the age and identification number will be stored.
23 The stored information may only be used by a law enforcement agency
24 for purposes of enforcement of the restrictions on the purchase of
25 alcohol, lottery tickets, and tobacco products and may not be shared

1 with any other person or entity.

2 (b) For purposes of compliance with the provisions of
3 sections 3 to 7 of this act, a seller who sells methamphetamine
4 precursors pursuant to such sections may scan machine-readable
5 information encoded on an operator's license or a state
6 identification card presented for the purpose of such a sale. The
7 seller may store only the following information obtained from the
8 license or card: Name, age, address, type of identification presented
9 by the customer, the governmental entity that issued the
10 identification, and the number on the identification. The seller
11 shall post a sign at the point of sale stating that the license or
12 card will be scanned and stating what information will be stored. The
13 stored information may only be used by law enforcement agencies,
14 regulatory agencies, and the exchange for purposes of enforcement of
15 the restrictions on the sale or purchase of methamphetamine
16 precursors pursuant to sections 3 to 7 of this act and may not be
17 shared with any other person or entity. For purposes of this
18 subsection, the terms exchange, methamphetamine precursor, and seller
19 have the same meanings as in section 3 of this act.

20 (c) The retailer or seller shall utilize software that
21 stores only the information allowed by this subsection. A programmer
22 for computer software designed to store such information shall
23 certify to the retailer that the software stores only the information
24 allowed by this subsection. Intentional or grossly negligent
25 programming by the programmer which allows for the storage of more

1 than the age and identification number or wrongfully certifying the
2 software shall be a Class IV felony.

3 (d) A retailer or seller who knowingly stores more
4 information than ~~the age and identification number authorized under~~
5 this subsection from the operator's license or state identification
6 card shall be guilty of a Class IV felony.

7 ~~(b)~~ (e) Information scanned, compiled, stored, or
8 preserved pursuant to subdivision (a) of this subsection may not be
9 retained longer than eighteen months unless required by state or
10 federal law.

11 (4) In order to approve a negotiable instrument, an
12 electronic funds transfer, or a similar method of payment, a person
13 having use of or access to machine-readable information encoded on an
14 operator's license or a state identification card may:

15 (a) Scan, compile, store, or preserve such information in
16 order to provide the information to a check services company subject
17 to and in compliance with the federal Fair Credit Reporting Act, 15
18 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose
19 of effecting, administering, or enforcing a transaction requested by
20 the holder of the license or card or preventing fraud or other
21 criminal activity; or

22 (b) Scan and store such information only as necessary to
23 protect against or prevent actual or potential fraud, unauthorized
24 transactions, claims, or other liability or to resolve a dispute or
25 inquiry by the holder of the license or card.

1 (5) Except as provided in subdivision (4)(a) of this
2 section, information scanned, compiled, stored, or preserved pursuant
3 to this section may not be traded or sold to or shared with a third
4 party; used for any marketing or sales purpose by any person,
5 including the retailer who obtained the information; or, unless
6 pursuant to a court order, reported to or shared with any third
7 party. A person who violates this subsection shall be guilty of a
8 Class IV felony.

9 Sec. 10. This act becomes operative on January 1, 2012.

10 Sec. 11. Original sections 28-401.01 and 60-4,111.01,
11 Reissue Revised Statutes of Nebraska, and sections 28-101 and
12 28-456.01, Revised Statutes Cumulative Supplement, 2010, are
13 repealed.